

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F005005

DEBBIE BEATTY KNAPP, EMPLOYEE	CLAIMANT
LOWELL HOME HEALTH AGENCY, EMPLOYER	RESPONDENT
TRAVELERS INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED AUGUST 30, 2005

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

Claimant represented by HONORABLE EVELYN BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE PHILIP CUFFMAN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed January 7, 2005.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on September 29, 2004, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that her cervical disc herniation is causally related to her compensable injury of April 18, 2000.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

The Majority finds that the claimant did not sustain a compensable injury to her cervical back. I find that the claimant provided credible testimony that she injured her cervical back. I further find that because of flawed diagnostic testing, the claimant's condition was not fully shown until an MRI in 2003. For these reasons, I respectfully dissent.

The claimant worked as a home health nurse. In April 2000 the claimant was lifting a patient from a mattress. She felt a "pop" in her back and immediately felt pain in her neck, back, and shoulder. On August 31, 2000 the claimant was diagnosed with a ruptured rotator cuff. On the same date x-rays were performed on her back and neck. The x-rays were returned as normal, but the doctor recommended the claimant have surgery on her rotator cuff.

The claimant subsequently had surgery to repair the rotator cuff. On December 6, 2000, the claimant submitted to an MRI. The MRI revealed that there was no

evidence of disc protrusion, but indicated a, "slight reversal of the usual cervical spine curvature." The report further indicated, "Slight reversal of cervical spine curvature possible secondary to muscle spasm. Otherwise unremarkable exam."

On December 7, 2000, Dr. Carl M. Kendrick opined that the claimant's back pain was likely secondary to her shoulder and would therefore not be ongoing. On January 22, 2001, Dr. Kendrick indicated that he believed the claimant had reached maximum medical improvement with regards to her spine.

On November 6, 2001, the claimant sought additional treatment from Dr. Kendrick. Dr. Kendrick indicated,

I did a MRI on her neck which was not really that conclusive and she had a shoulder problem. At that stage, I felt as though the shoulder problem was the source of her complaints. She subsequently has had that repaired apparently and returns today stating that she still hurts as she has hurt in the past. It is in the mid-thoracic region. It does not bore through and does not involve her chest and so forth.

Dr. Kendrick further indicated that he performed additional x-rays on the claimant, indicating they did not vary from those in the past. He also scheduled her for another MRI. The MRI was performed on November 9, 2001 and indicated that the claimant had, "T2 shortening and decreased height of the T6-7 and T11-12 levels compatible with desiccation and degeneration." The report further indicated that, "At the C6-7 level there is mild right paracentral disc protrusion." It goes on to indicate, "Mild T6-7 right paracentral disc protrusion. This may be of no clinical consequence since it does not appear to compress any neural elements."

Despite the performance of the MRI, on November 14, 2001, Dr. Kendrick indicated, "Debbie's MR was not very adequate because she had a panic attack". He also referred her to see Dr. Raben.

On November 30, 2001, Dr. Raben treated the claimant and indicated, "I am suspicious that she has perhaps thoracic sprain/strain syndrome and perhaps subluxation of a rib head." Dr. Raben referred the claimant

to a different physical therapist and also referred her to a chiropractor.

On January 14, 2002, Dr. Raben indicated that the claimant was to continue taking muscle relaxers and continue going to physical therapy. On February 1, 2002, Dr. Raben indicated that the claimant had not reached maximum medical improvement with regards to, "her thoracic spin strain and subluxed rib head."

The claimant received treatment chiropractic treatment from Dr. Steven W. Whitelaw. On May 2, 2002 Whitelaw indicated the claimant's MRI showed a herniated disc and that the claimant had reached maximum medical improvement.

On July 26, 2002 Dr. Tony Harbach treated the claimant. He indicated,

Thoracic MRI is of suboptimal quality because of motion artifact but she does have extremely worn out disc at T6-7 with a small posterior bulge. She also has a worn out disc at T11-12 with decreased disc height and decreased signal on T1 weighted mages(sic) in both of the above mentioned discs but there is no significant central or foraminal stenosis or severely large herniated disc although there is a central bulge

at the T6-7 level. It is difficult to interpret the axial cuts because of the artifact.

The report goes on to indicated, "I think at this point another study of her thoracic spine is probably unwarranted even though the one is very poor quality." He further indicated that the claimant had reached maximum medical improvement as of "July 2002", but indicated she would need to continue with ongoing therapy.

On July 31, 2002 Dr. Eric Walker indicated, "At this time it is my understanding we are awaiting possible evaluation of her lumbar spine as well as a possible MRI of her thoracic spine per Dr. Harback." On October 9, 2002 Dr. John Park indicated that he was recommending that the claimant see Dr. Raben for treatment of her cervical pain as it was unrelated to her shoulder problem.

On October 6, 2003 the claimant had another MRI. It indicated,

At C5-6, a broad based disc protrusion is noted which is slightly eccentric to the right. The disc material appears to abut but not displace the cervical cord. There is mild neuroforaminal narrowing noted at the right on this level. Mild

disc space narrowing and disc desiccation are seen.

The employer has already stipulated that the claimant's upper back injury was compensable. While the Majority, by adopting the decision of the Administrative Law Judge, finds that the claimant's disc cervical herniation was not caused by her injury at work, I find that it was causally related. Though the claimant's herniation did not show up until 2003, I find that the medical reports indicate that previous MRIs were of poor quality, indicating the condition likely existed before 2003. Additionally, there is no evidence that the claimant had any history of having back problems prior to her injury. After the claimant's injury, she consistently complained of pain in her back and there is no evidence that she injured herself in any way before the MRI in 2003. Accordingly, I find that the claimant's condition likely existed, but was not revealed due to the poor quality of the MRIs.

When the primary injury is shown to have arisen out of and in the course of the employment, the employer is responsible for any natural consequence that flows from that

injury. Jeter v. B.R. McGinty Mech., 62 Ark.App. 53, 968 S.W.2d 645 (1998). The basic test is whether there is a causal connection between the two episodes. Bearden Lumber Co. v. Bond, 7 Ark.App. 65, 644 S.W.2d 321 (1983). It is the Commission's duty to determine if a causal connection exists between the primary injury and any additional injuries. Williams v. Prostaff Temporaries, 336 Ark. 510, 988 S.W.2d 1 (1999).

While medical evidence is not required to show a causal connection, claimant must show proof by a preponderance of the evidence. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999).

It has long been recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury upon a showing that the injury manifested itself within a reasonable period of time following the incident, is logically attributable to the incident, and there is not other reasonable explanation for the injury. Hall v. Pittman Construction Co., 235 Ark. 104, 357 S.W.2d 263 (1962).

If the claimant's disability arises soon after the accident and is logically attributable to it, with nothing to suggest any other explanation for the employee's condition, we may say without hesitation that there is no substantial evidence to sustain the Commission's refusal to make an award. Clark v. Ottenheimer, 229 Ark. 383, 314 S.W.2d 497 (1958); Johnson v. Little Rock School District, Full Commission Opinion filed April 4, 2002 (E700511 & F011921). But, if the disability does not manifest itself until many months after the accident, so that reasonable men might disagree about the existence of a causal connection between the accident and the disability, the issue becomes one of fact upon which the Commission's conclusion is controlling. Kivett v. Redmond Co., 234 Ark. 855, 355 S.W.2d 172 (1962).

In this instance the Majority relies solely on the fact that the claimant's disc herniation was not revealed in 2003 in order to deny benefits. More specifically, they rely on the testimony of Dr. Knox in denying benefits. Dr. Knox testified as follows,

Q. All right. Now, let me ask you to look at the December 2000 MRI.

A. Okay.

Q. And to compare the two for me, if you would. And you - you know what I'm looking for. If you see the same things on that one that you saw on the one that you later ordered.

A. Yes. This - I - I do not see that disc herniation on the December 2000 MRI scan.

Q. So there was a change somewhere in between the two.

A. Yes.

Q. Okay. Is there anything in the December 2000 MRI that suggests to you that that was perhaps an incipient problem that looks like the beginning of that problem that you later saw in - in October of 2003?

A. There were some3 mild disc space changes.

Q. Anything to suggest, though, that it would eventually result in some kind of a herniation?

A. No.

Q. Okay.

A. Not that I could state.

Though Dr. Knox testified that the claimant's MRI from 2000 did not have any herniations, I note that more than one doctor noted the poor quality of the claimant's tests prior to 2003, indicating that her condition was likely missed. On November 6, 2001, Dr. Kendrick indicated that he had done an MRI on the claimant's back, but that the MRI, "was really not that conclusive." Dr. Kendrick scheduled the claimant for another MRI, which seems to indicate that he was dissatisfied with the results of the first MRI. That MRI revealed, "At the C6-7 level there is mild right paracentral disc protrusion."

This MRI also appears to have been defective in nature. On November 14, 2001, Dr. Kendrick indicated, "Debbie's MR was not very adequate because she had a panic attack." On July 26, 2002, Dr. Ton Harbach indicated, "Thoracic MRI is of suboptimal quality because of motion artifact." He goes on to indicate that, "It is difficult to interpret the axial cuts because of the artifact." The report further indicates that the study was of "very poor quality." Though this comment was regarding the claimant's thoracic MRI, I note that the same MRI report contained

language indicating that the claimant had a bulge at C6-7. Though I note this language is not included under the "Opinion" portion of the report and that the language at the "Opinion" portion of the report pertains to language regarding the thoracic spine, I note that C6-7 is adjacent to the thoracic spine. As such, it is difficult to determine whether the language indicating the bulge was at C6-7 was due to a typographical error or whether that language was correct. Regardless, the report is indicative that the claimant's previous MRIs were flawed and that the full nature of the claimant's cervical problems was not fully known until the MRI in 2003.

The statements from the aforementioned doctors indicate that the claimant's MRIs were of very poor quality. The fact that the MRIs were ordered again and that the doctors specifically noted the poor quality of the tests, to me, indicates that the claimant's herniation could have existed prior to 2003 but simply not been caught by the doctors.

While Dr. Knox opined that he did not believe the claimant's herniation existed in 2000, I find that does not

rebut the evidence that prior studies of the claimant's back were flawed. When considered in light of the fact that the claimant complained of pain in her cervical back from the time of her injury on and her testimony that she did not further injure herself after the initial injury, I find that it is likely the claimant's injury did in fact cause the cervical disc herniation. For these reasons, I respectfully dissent.

SHELBY W. TURNER, Commissioner