

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F210149

PAMELA LOCKHART,
EMPLOYEE

CLAIMANT

ST. EDWARD MERCY MEDICAL CENTER,
EMPLOYER

RESPONDENT

SISTERS OF MERCY HEALTH SYSTEM,
INSURANCE CARRIER

RESPONDENT

OPINION FILED OCTOBER 18, 2005

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

Claimant represented by HONORABLE BRENT STERLING, Attorney
at Law, Fayetteville, Arkansas.

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

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The Arkansas Court of Appeals has reversed the Full Commission in the above-styled matter and has remanded "for the Commission to make findings with regard to appellant's argument that she suffered a gradual-onset injury." See *Lockhart v. St. Edward Mercy Medical Center*, CA05-106 (Ark. App. August 31, 2005). Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved she sustained a compensable back injury which was not caused by a specific incident. The Full Commission finds

that the claimant proved she was entitled to reasonably necessary medical treatment, and that the claimant proved she was entitled to temporary total disability compensation from August 22, 2002 through December 17, 2002. We find that the claimant proved she was entitled to anatomical impairment in the amount of 8%.

I. HISTORY

The record indicates that Pamela Marie Lockhart, age 51, was hired by St. Edward Mercy Health Network in October 1998. Ms. Lockhart testified that she was a dietary manager for the respondent-employer. The claimant testified that she began developing muscle spasms and numbness in her leg in August 2002. The claimant attributed these problems to "loading and unloading carts and pulling them up to the floor." The parties stipulated that the employment relationship existed on August 21, 2002. The claimant testified that on that date, "I was pulling or pushing the cart up on the floor and my - I felt this excruciating pain and it went down my left leg and my left leg would not bear my weight or support it and I was hurting across my lower back."

The claimant wrote on an Employee Injury Report, "my left leg went numb & there was excruciating pain down my lower back." The Report indicated a date of accident of August 21, 2002.

The claimant filled out a WCC Form N on August 30, 2002. The claimant wrote that the cause of injury was, "repetitive strain from pushing oversize pt. food service carts & overloaded dish carts, down carpeted passageway," "sudden jolting stops to avoid running over pts. & coworkers."

On September 24, 2002, the claimant requested an indefinite leave of absence beginning August 21, 2002.

On October 21, 2002, Dr. Mark A. Hayes performed a "Decompressive lumbar laminectomy on the left at L4 with foraminotomy and diskectomy." Dr. Hayes' pre-operative and post-operative diagnosis was "Stenosis, L4-L5 on the left."

On a form dated December 17, 2002, Dr. Hayes indicated that the claimant could return to work on December 18, 2002. Dr. Hayes remarked, "May work as food service supervisor. I have read the job description."

Dr. Hayes wrote to the claimant's attorney on March 5, 2003:

As you know I took care of Pamela Lockhart for her lumbar spine. Ms. Lockhart was injured on 08/21/02 when she was pulling a dietary cart filled with food. It weighed about 500 to 600 pounds. She began having back and leg pain following this. She was treated conservatively by Dr. Ferguson at the Indian Hospital in Talihina and was then referred to me....

An MRI was unclear so a myelogram and CT was ordered. This showed a small disc herniation at L4-5 on the left and severe disc space narrowing. There was also a compression fracture found at L1. The disc herniation and the severe stenosis were consistent with her clinical symptoms. It is my opinion within a reasonable degree of medical certainty that the findings on the myelogram and CT scan are consistent with Ms. Lockhart's description of her injury and duties at St. Edwards Hospital. It is also my opinion within a reasonable degree of medical certainty that Ms. Lockhart did sustain an injury as a result of her work related activities.

On 10/21/02 Ms. Lockhart underwent surgery for her condition. I performed a decompressive lumbar laminectomy at L4 with foraminotomy and discectomy. She did very well following surgery and was subsequently released from my care on 12/17/02.

Ms. Lockhart's diagnosis is status post HNP L4-5 with stenosis. As a result of her injury Ms. Lockhart was temporarily totally disabled from the first time I evaluated her on 09/17/02 until 12/18/02. On 12/18/02 the patient was given permanent restriction of no lifting or carrying

over 40 pounds, no pushing or pulling over 40 pounds, no repetitive activities and no excessive bending or twisting.

It is my opinion within a reasonable degree of medical certainty that Ms. Lockhart's work activities are the major cause (more than 50%) of her need for medical care and treatment.

A pre-hearing order was filed on September 30, 2003. The claimant contended, among other things, that she "sustained a compensable injury and/or aggravation of a preexisting condition to her lumbar spine as a result of pushing an oversized patient food service cart while performing her employment for the respondent." The claimant also contended that she "sustained a compensable injury and/or aggravation of her preexisting lumbar spinal condition as a result of her work for the respondent and that she is entitled to all pertinent workers' compensation benefits."

The respondents contended that the claimant did not sustain an injury "within the course and scope of her employment. Respondents will also assert a credit or offset for disability benefits paid to claimant through her policy with St. Edward."

The parties agreed to litigate the following issues:

1. Compensability of the claimant's spinal problems;
2. Related medical;
3. Temporary total disability from August 21, 2002, to December 18, 2002;
4. Whether the claimant was entitled to a permanent impairment of 9 to 10% as assessed by Dr. Hayes;
5. Credit to the respondents for benefits paid; and
6. Attorney's fees.

The parties deposed Dr. Hayes on January 20, 2004. The claimant's attorney questioned Dr. Hayes:

Q. Doctor, assuming that Ms. Lockhart had an intermittent history of low back pain going down into the left leg and it had gotten significantly worse on August 21, 2002, would that in any way change your opinions that you've stated in your March 5, 2002 narrative report or 2003 narrative report?

A. It tends to confirm that.

Q. In your medical opinion was there a herniated disc present?

A. Yes.

Q. Did you observe that at the time of surgery?

A. I did.

Q. And in your medical opinion and based upon a reasonable degree of medical certainty was the work activity or this injury the major cause of her need for medical care and treatment, including the surgery?

A. Are you discussing the 8-21 injury?

Q. Yes.

A. Yes, it was.

Q. If Ms. Lockhart had preexisting degenerative changes at the L4-L5 level and was not having significant pain up until this three weeks, would it be your medical opinion that she had aggravated her pre-existed (sic) condition as a result of his work activity?

A. She certainly aggravated it, but as I stated earlier, I think a lot of her back symptoms were really coming from the L5-S1 level which is a whole different level.

Q. And L4-5 which was surgically operated probably one was causing what type symptoms?

A. Primarily leg symptoms.

Q. And in your opinion, is that related to her work activities and the injury?

A. Yes, it is.

After a hearing, an administrative law judge filed an opinion on April 2, 2004. The administrative law judge found, in pertinent part:

4. The claimant has proven by a preponderance of the evidence that she sustained a work related injury while working for the respondent on August 21, 2002....

5. The respondents should pay for all reasonable and necessary medical treatment for this claimant's compensable injury from August 21, 2002, to a date to be determined.

6. The claimant has proven ... that she is entitled to temporary total disability beginning August 22, 2002, to December 18, 2002....

7. The claimant is entitled to an impairment rating in the amount of 10 percent for her work related back injury which the respondents should pay....

The respondents appealed to the Full Commission. The respondents stated that the administrative law judge erred in finding that the claimant sustained a work-related injury on August 21, 2002, and that the ALJ erred in finding that the claimant was entitled to a 10% impairment rating. In her brief to the Full Commission, the claimant argued that she had sustained "a lumbar injury and/or aggravation of a preexisting lumbar condition due to a specific incident that arose out of and in the course of her employment with the respondent on August 21, 2002."

The Full Commission filed an opinion on October 27, 2004. The Full Commission found that the claimant did not prove she sustained an accidental injury pursuant to Ark. Code Ann. §11-9-102(4)(A)(i). We therefore reversed the administrative law judge's opinion and dismissed the claim. The claimant appealed to the Arkansas Court of Appeals. The Court of Appeals has reversed and remanded the case, holding

that the Commission "made no findings with regard to appellant's gradual-onset injury argument."

II. ADJUDICATION

A. Compensability

_____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). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16) (A) (i). The claimant's burden of proof shall be 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) (ii).

The Full Commission finds in the present matter that the claimant proved she sustained a compensable injury pursuant to Ark. Code Ann. §11-9-102(4)(A)(ii)(b). The claimant credibly testified that she gradually began suffering from muscle spasms and numbness in her leg while pushing heavy carts for the respondents in August 2002. The claimant testified that she suffered from excruciating pain while performing these duties on August 21, 2002. The Employee Injury Report and WCC Form N both corroborated the claimant's testimony. The claimant ultimately underwent a lumbar laminectomy at L4 in October 2002.

The claimant's treating surgeon, Dr. Hayes, stated in March 2003 that he had observed a small disc herniation at L4-5 on the left. Dr. Hayes stated, "It is my opinion within a reasonable degree of medical certainty that the findings on the myelogram and CT scan are consistent with Ms. Lockhart's description of her injury and duties at St. Edwards Hospital. It is also my opinion within a reasonable degree of medical certainty that Ms. Lockhart did sustain an injury as a result of her work related activities." Dr.

Lockhart's deposition testimony corroborated his earlier medical opinions.

The Full Commission finds that the claimant sustained a back injury which was not caused by a specific incident and was not identifiable by time and place of occurrence. The claimant's back injury caused physical harm to the claimant's body and arose 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 not within the claimant's voluntary control, namely, the work-related L4-5 disc herniation reported by Dr. Hayes. The claimant also proved that the compensable back injury was the major cause of her disability and need for treatment.

B. Temporary Disability

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. Ark. State Hwy. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). "Healing period" means "that period for healing of an injury resulting from an accident." Ark. Code Ann. §11-9-102(12).

In the present matter, the Full Commission finds that the claimant proved she was entitled to temporary total disability compensation from August 22, 2002 through December 17, 2002. The claimant reported her back injury on August 21, 2002, and the record indicates that the claimant was unable to work beginning August 22, 2002. The claimant was therefore within a healing period for her compensable back injury and was incapacitated to earn wages beginning August 22, 2002. The claimant subsequently underwent surgery for an L4-5 disc herniation. On a form dated December 17, 2002, Dr. Hayes indicated that the claimant could return to work on December 18, 2002. Dr. Hayes indicated that he had read a job description and that the claimant could return to work as a food service supervisor for the respondent-employer. The record therefore demonstrates that the claimant did not remain within a healing period and was not incapacitated to earn wages after December 17, 2002.

C. Anatomical Impairment

An injured worker must prove by a preponderance of the evidence that she is entitled to an award for a permanent

physical impairment. Weber v. Best Western of Arkadelphia, Workers' Compensation Commission F100472 (Nov. 20, 2003). Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment. Ark. Code Ann. §11-9-102(4)(F)(ii)(a). "Major cause" means "more than fifty percent (50%) of the cause." Ark. Code Ann. §11-9-102(14)(A). Further, any determination of the existence or extent of physical impairment must be supported by objective and measurable physical findings. Ark. Code Ann. §11-9-704(c)(1)(B).

Following her compensable back injury in the present matter, the claimant underwent a discectomy at L4-5. The claimant testified that her leg pain resolved following surgery. Dr. Hayes agreed that the claimant's symptoms improved following surgery, and he did not recommend additional treatment in connection with the claimant's L4-5 disc. The claimant's anatomical impairment rating will be based on the Guides to the Evaluation of Permanent Impairment, 4th Edition. Table 75 of the Guides, II. D., assigns an 8% impairment of the whole person for a

surgically treated lumbar disk lesion without residual signs or symptoms. The Full Commission finds that the claimant proved she was entitled to an 8% anatomical impairment rating. The 8% anatomical impairment rating is supported by objective and measurable physical findings, and the compensable injury was the major cause of the claimant's anatomical impairment rating.

Based on our *de novo* review of the entire record, and pursuant to the remand from the Court of Appeals, the Full Commission affirms the administrative law judge's April 2, 2004 opinion. The Full Commission finds that the claimant proved she sustained a compensable back injury pursuant to Ark. Code Ann. §11-9-102(4)(A)(ii)(b). The claimant proved that the medical treatment of record was reasonably necessary in connection with her compensable injury pursuant to Ark. Code Ann. §11-9-508(a), including all of the treatment provided by Dr. Hayes. The claimant proved she was entitled to temporary total disability compensation from August 22, 2002 through December 17, 2002. The respondents are entitled to a statutory "offset" pursuant to Ark. Code Ann. §11-9-411. The claimant proved she was entitled to an

anatomical impairment rating of 8%. The claimant's attorney is entitled to fees for legal services pursuant to Ark. Code Ann. §11-9-715(a) (Repl. 2002). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(B) (2) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.