

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F014290 and F100161

TAMMI J. DICKSON, EMPLOYEE	CLAIMANT
DARI INN, EMPLOYER	RESPONDENT
ZENITH INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED JULY 15, 2008

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

Claimant represented by HONORABLE FREDERICK S. SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondent represented by HONORABLE ANDREW IVEY, 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 April 30, 2007.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction over these claims.
2. The stipulations set forth above are reasonable and are hereby accepted.

3. Claimant has not proven by a preponderance of the evidence that her neck, shoulder and back injuries are compensable.

4. The reasonable and necessary medical care issue is moot in light of the above finding.

The claimant alleges that he sustained a compensable injury that is governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injury is, indeed, an injury that is covered by the Act; however, the claimant has failed to establish the elements necessary to prove a compensable injury by a preponderance of the evidence.

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.

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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 Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that the clamant failed to prove that she sustained a compensable injury to her neck in May of 2000.

The opinion of the Administrative Law Judge was affirmed and adopted in its entirety by the majority without additional discussion. Therefore, the opinion of the Administrative Law Judge and all of the findings and

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conclusions contained in that decision are now the majority opinion.

The claimant worked as a cook for the respondent employer, Dari Inn, for a period of eight to nine years. In May of 2000, she was walking toward a sink in front of a steam table and fell on the concrete floor. In an effort to catch herself, she grabbed the steam table with her right hand, jerking her neck and almost pulling her arm out of its socket.

A co-worker, Roxanne Parlet, testified that she and the owner of the restaurant knew about the fall the next morning after it occurred, when everyone on the job was laughing about it. Ms. Parlet testified that after the fall the claimant complained of pain in her hands and neck which she had never done before the fall.

The owner of the restaurant, Sue Allen, confirmed that she was not working the night of the fall but acknowledged that she found out about it the next day. While admitting knowledge of the fall and awareness that the claimant was experiencing problems with her hands and arm,

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which she attributed to carpal tunnel syndrome, she denied knowing that the claimant was having difficulty with her neck, back, or shoulder until she was told by other employees that the claimant was having these other problems.

The claimant was initially seen in the Mountain Home Christian Clinic on March 25, 2000. The medical records of that date contain a history of a fall in the past and complaints of various problems in the neck, arm, hand, and back. With regard to the back pain, the medical records indicated that the claimant did not know whether the back pain was due to the fall and that the back problems had been going on for the past two years. No statements were made indicating preexisting neck problems. An MRI was ordered for the cervical spine which was performed on June 1, 2000 and interpreted to show two cervical herniated disks.

The claimant was referred to an orthopedic surgeon, Dr. Anthony D. McBride, who evaluated the claimant and reviewed the MRI, on July 14, 2000. Dr. McBride indicated that the claimant was having neck pain with right arm pain and numbness and diagnosed her with "C5-6 and C6-7

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cervical disk herniations with right upper extremity radiculopathy". Dr. McBride's initial medical report indicates that the claimant had an onset of increasing right arm and shoulder pain over the past two years. He noted that the claimant "has had chronic mild neck pain as well". During follow up treatment, Dr. McBride became concerned that the claimant might have carpal tunnel syndrome as well as herniated disks and sent her for nerve conduction studies. After reviewing the nerve conduction studies Dr. McBride concluded that the claimant was suffering from carpal tunnel syndrome in both wrists which could be related to repetitive activities on the job. He thought a carpal tunnel release surgery might be beneficial.

On November 20, 2000 the Claimant was seen by Dr. Michael M. Moore, an orthopedic hand specialist, for evaluation of the bilateral carpal tunnel syndrome. On that date, Dr. Moore identified the complexity of the claimant's overlapping medical problems, as follows:

It is my opinion Ms. Dickson presents with a complex problem. I suspect some of her symptoms may be related to a

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bilateral carpal tunnel syndrome. In addition, the neck and shoulder symptoms may be related to a disc herniation. Finally, her right shoulder pain is most likely related to impingement. Prior to considering carpal tunnel surgery, it is my opinion Ms. Dickson should undergo an evaluation of her cervical spine and right shoulder. I have recommended she undergo a cervical spine examination by Dr. Ted Saer. Her right shoulder will be evaluated by Dr. Chuck Pearce.

The respondents accepted responsibility for the treatment of the carpal tunnel syndrome. The compensability of the neck, shoulder, and back problems was denied, therefore, no further evaluations were conducted on these problems. At any rate, Dr. Moore confirmed the diagnosis of bilateral carpal tunnel syndrome and performed a right carpal tunnel release on March 6, 2001 and a left carpal tunnel release on May 22, 2001.

Based on the evidence discussed above, the Administrative Law Judge denied the compensability of the back, neck, and shoulder injuries. While the majority concluded that there were problems with the compensability of the claimant's back and shoulder conditions, due to

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statements in the medical records indicating that these conditions may have existed for years, no such evidence can be found with respect to the neck injury. The claimant proved the compensability of the neck injury by the overwhelming weight of the evidence. The claimant and her husband testified that the claimant had no significant neck problems prior to the fall and described significant difficulties afterwards. The only disinterested witness, Roxanne Parlet, a co-worker, confirmed these facts.

Ms. Parlet testified that, before the fall, the claimant was able to perform all the duties of her employment which included some rather strenuous activities involved in cooking and waiting tables. According to Ms. Parlet, the claimant had a considerable amount of difficulty performing job duties after her fall, often complaining of pain in her hands and neck. And even the owner of the restaurant, Sue Allen, testified that, prior to the fall, she never heard the claimant complain about neck pain other than ordinary complaints everyone makes after over-exertion.

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Further, the medical records substantiate the occurrence of the neck injury. On May 25, 2000, during the very first doctors visit, the claimant complained of pain in her neck which radiated down her right arm. Dr. J.M. Tullis stated, on that date, that the claimant was an "earnest nondrug seeking hard working girl with C5-6 radiculopathy". Unlike the back injury, these medical records contain absolutely no history of prior neck problems. An MRI of the claimants neck was ordered during her initial visit with Dr. Tullis. The MRI showed that the claimant was suffering from two herniated disks in her neck at the C5-6 and C6-7 levels with radiculopathy down the right arm.

A finding of compensability calls for proof of a specific incident, identifiable by time and place of occurrence, arising out of and in the course of employment, causing physical harm to the body, requiring medical treatment or resulting in disability, which is established by medical evidence and supported by objective findings. Ark. Code Ann. §11-9-102(4)(E)(i); §11-9-102(4)(A)(i); and §11-9-102(4)(D). It is undisputed that the claimant had a

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specific incident in the course of her employment when she fell while performing her job in May of 2000. The place was on the way to the sink and in front of the steam table. The time was May 2000, the night before everyone was laughing about it the next morning. The injury required medical treatment on May 25, 2000. The physical harm resulting from the injury was two herniated disks in the cervical spine supported by the objective MRI findings. Causation was established by proof that the herniated disks were discovered immediately during the claimant's initial medical treatment, there is as no evidence that this condition preexisted the fall, and because there was no other explanation for the presence of the two herniated disks. The claimant proved every statutory element of compensability.

The Administrative Law Judge concluded that the claimant failed to prove a causal relationship between the fall and the herniated disks in her neck. In support of this finding, he says that there was no history of a specific fall given to the doctors when the claimant first presented for medical treatment on May 25, 2000. The claimant did not

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know the exact date of her fall. When the claimant first sought medical treatment she had no specific date to give the medical providers so she indicated that she had fallen in the past. Therefore, she clearly reported the fall during her first treatment and the fact that there was no specific date attributed to the fall is certainly understandable.

Secondly, the Administrative Law Judge indicated that the claimant admitted to having minor neck problems in the past and that Dr. McBride wrote that the claimant had "chronic mild neck pain" prior to the injury. There is a monumental difference between mild or minor neck pain and two herniated disks in the cervical spine with radiculopathy. Clearly, the claimant would not have been able to perform her work without difficulty with two herniated disks in her neck. The claimant, her husband, and a co-worker, testified that she had no serious preexisting neck problems. The claimant worked for the respondent-employer for eight years, at rather heavy work, and even the owner of the restaurant testified that she did not have difficulty with her neck during this time.

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And finally, the Administrative Law Judge quotes the following statement from Dr. McBride, for the proposition that the claimant had been suffering from disk herniations for years:

[Claimant] is returning for evaluation of her cervical disk herniations. She has had some improvement in her neck pain with the traction; however, she had had persistent hand numbness and this does awaken her from sleep at night. She has apparently had these problems for seven years.

The report does not say that the claimant has been suffering from disk herniations for years but that she has been suffering from hand numbness for years. To say otherwise, is a misinterpretation of the report. It should be noted that the claimant was undergoing treatment for compensable carpal tunnel syndrome at this time and the symptoms were numbness in her hands. The carpal tunnel syndrome was later determined to be work related and to have developed over a long period of time. Clearly, the doctor was referring to the carpal tunnel symptoms as existing for years and not the cervical disk herniations.

As correctly pointed out by the Administrative Law Judge, a causal relationship is established between and employment-related incident and a subsequent physical injury when the evidence shows that the injury manifested itself within a reasonable period of time following the incident, so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. Hall v. Pittman Construction Co., 234 Ark. 104, 357 S.W.2d 263 (1962). In this case, the herniated disks manifested themselves during the very first medical treatment for the injury, demonstrating a close temporal relationship between the fall and the discovery of the herniated disks. The disk herniations were logically attributable to the fall as the evidence established that it would be highly unlikely that these herniations could have existed prior to the fall and there was no evidence, whatsoever, suggesting any other explanation for their existence.

In conclusion, the reasons put forth by the Administrative Law Judge do not form a sufficient basis for

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concluding that the claimant's neck injury was not causally related to her fall in May of 2000. From a de novo review of the record, I find that a preponderance of the evidence demonstrates that the claimant established all elements of compensability of the neck injury and that she should be awarded reasonable and necessary medical expenses associated with the treatment of that injury. For this reason, I must respectfully dissent from the majority opinion.

PHILIP A. HOOD, Commissioner