BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F313694

VIRGINIA MILLER, EMPLOYEE	CLAIMANT
FAUCON PROPERTIES, INC., EMPLOYER	RESPONDENT
CCMSI, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED OCTOBER 16, 2008

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

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

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

Decision of Administrative Law Judge: Affirmed in part, reversed in part.

OPINION AND ORDER

The respondents appeal and the claimant cross-appeals an administrative law judge’s opinion filed October 11, 2007. The administrative law judge found that the claimant proved she sustained compensable injuries to her left shoulder and low back. The administrative law judge found that the claimant failed to prove she sustained an injury to her neck. After reviewing the entire record *de novo*, the

Full Commission affirms the administrative law judge’s finding that the claimant did not prove she sustained a compensable injury to her neck, and we affirm the administrative law judge’s finding that the claimant proved she sustained a compensable injury to her left shoulder. We reverse the administrative law judge’s finding that the claimant proved she sustained a compensable injury to her low back.

I. HISTORY

The parties stipulated that the employment relationship existed at all relevant times, including December 12, 2003. Virginia Miller, now age 60, testified that she was working for the respondents as an LPN. Ms. Miller testified, “I was walking down the hall, and I looked in the room and saw the patient coming out of bed....I went in and I picked her legs up and put them back in the bed so that she wouldn’t fall because she was almost to the point of falling. And I pushed the button for help. And I stayed with the patient until help arrived. And then we pulled the patient up into the bed, further into the bed, so that she was totally in the bed at that point.” The claimant testified that she

felt pain in her shoulder and back, "It was more in the shoulder than anything."

The claimant filled out an accident report on December 12, 2003: "I was helping Mrs. Josephine Kunde to get her legs back in bed because she had worked herself to the end of the bed. I felt a sharp pain in my lower back. Mrs. Kunde did not want to get back in bed and was pushing against me." A diagram on the accident report indicated that the claimant felt pain in her left shoulder area and low back.

The claimant signed a Form AR-N, Employee's Notice Of Injury, on December 12, 2003. The claimant reported that she had injured her lower back. A physician's report dated December 12, 2003 indicated that the claimant was diagnosed with a low back strain, "Expect Full Recovery." No objective medical findings were noted. A physical therapy evaluation on December 19, 2003 showed the following:

> Patient is a 56 year old female referred to physical therapy with a diagnosis of left shoulder pain. Patient reports that she was helping a patient back in bed when she injured her shoulder and low back. She initially had pain in the low back region but her back pain has resolved with her medications. Her current complaint is pain in the left mid scapular region. Her pain has progressively gotten worse and is worse at the end

> of the day. She reports that she is unable to pick up anything with her left upper extremity....
>
> Range of motion of the cervical spine was within functional limits with patient reporting pain with all directions of the cervical spine....Patient also reported pain with active range of motion of the left shoulder and pain with resisted test of the left shoulder. No abnormal tone was detected and deep tendon reflexes were within normal limits and symmetrical.

The claimant was treated "with moist hot pack and interferential electrical muscle stimulations to the lower cervical and upper thoracic region." The claimant continued to follow up with the physical therapist and was discharged from physical therapy on January 13, 2004.

An MRI of the claimant's left shoulder was taken on January 18, 2004, with the resulting Opinion:

> There is abnormal signal at the insertion of the rotator cuff which predominantly involves the humerus with minimal high signal change in the tendon. This may represent a partial avulsion injury of the cuff. Given the lack of edema in the cuff and lack of fluid in the shoulder, this may be old. No other abnormalities are identified.

Dr. Anthony D. McBride evaluated the claimant on January 28, 2004:

> The patient is a 56-year-old female who states that on December 12, 2003 she was attempting to lift a patient's legs while at work when she felt a pulling sensation in the left shoulder and lower back. She had no prior history of shoulder pain.

> The back symptoms gradually resolved but she has had persistent left shoulder pain which is constant....She was told she had a rotator cuff tear and is presenting for further evaluation....
>
> Her left shoulder reveals mild tenderness to palpation over the deltoid muscle with no spasms....
>
> X-rays of the left shoulder brought with her today reveal no signs of degenerative changes and no signs of fractures....
>
> The MRI scan brought with her reveals, what appears to be, a small tear of the rotator cuff at its insertion without retraction. No surrounding edema. This is very small in size. There is no evidence of bone lesions.

Dr. McBride assessed "Left shoulder pain with arm numbness, uncertain etiology....At this point, I am not convinced that the small rotator cuff tear is causing her symptoms. We have to make certain she has no underlying cervical pathology. We will proceed with a MRI scan of the cervical spine...."

An MRI of the claimant's cervical spine was taken on February 3, 2004:

> Diffuse osteoarthritis and multiple level degenerative disc disease, mild to moderate, is noted. There are posterior protrusions present including C3-C4, C4-C5, C5-C6 and C6-C7. At the C5-C6 level, the largest posterior protrusion is noted to the right of midline. This small to moderate size right sided posterior protrusion is suspicious for a disc herniation. Does this patient have right sided symptoms? A small right

> sided posterior protrusion is also questioned at C3-C4, more difficult to confirm over tangential images. Clinical correlation to this exact level is requested as well. The remainder of the small posterior protrusions are felt to represent disc bulges without disc herniation identified.
>
> IMPRESSION:
> 1. Suspicious for a small to moderate size right sided disc herniation at C5-C6.
> 2. Questionable small right sided disc herniation at C3-C4, more difficult to confirm over tangential images.
> 3. Mild to moderate diffuse osteoarthritis and degenerative disc disease.

Dr. McBride noted on February 20, 2004, "She is returning for evaluation of her cervical MRI scan. This study reveals two broad based disk bulges at C5-6 and C6-7; however, these are on the right side and her symptoms are on the left. There is certainly no pathology in her neck which would attribute to her left arm pain." Dr. McBride assessed "Rotator cuff tear of left shoulder with unremarkable cervical study....We will proceed with a diagnostic arthroscopy of the left shoulder with possible open repair."

Dr. McBride noted on October 19, 2005, "She is returning for evaluation of her left shoulder rotator cuff tear. It has been a year and a half since we have scheduled this procedure for her. She never proceeded with surgery at that time. She states she is having worsening symptoms and

continues to have some neck pain, as well. I have explained to her once again that we cannot help her with this neck problem. Since it has been so long since we have evaluated her rotator cuff injury, this may not be reparable at this point." Dr. McBride assessed "Chronic rotator cuff tear of the left shoulder....We will proceed with a MRI scan of the left shoulder to make certain this has not progressed to a point where it is irreparable."

An MRI of the claimant's left shoulder was taken on October 25, 2005, with the following impression: "1. Some signal change in the rotator cuff, suggestive of tendinosis. A definite tear is not seen. 2. Incidental note of a tiny cyst in the humerus, at the insertion of the rotator cuff."

Dr. Todd Oliver performed surgery on November 10, 2005:

> The patient is a 58-year-old-female with a history of left shoulder rotator cuff tear confirmed by MRI. She has failed conservative treatment administered by Dr. McBride. She has asked if I would perform a rotator cuff repair.... [T]he glenohumeral joint was examined in systematic fashion. No degenerative changes were noted. Some mild fraying of the superior labrum was appreciated, but this was intact to biceps anchor and healthy biceps tendon. The rotator cuff tear was easily identified, rather small in nature. What was noted was just some generalized thinning of the rotator cuff....A partial bursectomy was performed with a thermal wand through a lateral portal, revealing a sharp

> subacromial spur. The coracoacromial ligament was released. Subacromial decompression was performed with a 4.0-mm bur....Any remaining bursa was excised. The tear was easily identified, again small in nature along the anterior portion of the supraspinatus. Once again, she had an extraordinarily thin rotator cuff tendon. The tear was debrided and repaired to bone with #2 cottony Dacron sutures. This also required, due to somewhat of a triangular nature of the tear, an interval suture as well....
> The subacromial decompression was palpated and noted to be adequate....

Dr. Oliver noted on November 22, 2005 that the claimant was doing well following surgery, but subsequently noted that the claimant complained of continued pain.

Dr. Travis D. Richardson, D.O., examined the claimant on January 24, 2006:

> The patient is a 58-year-old white female who was sent to me in request for consultation from Dr. Tammy Hale-Tucker for evaluation of low back pain. It appears she had a Workman's Compensation claim in December of 2003. At that time, she states she lifted a resident onto a bed and had a left rotator cuff injury, as well as back injury....
>
> Radiographs showed some mild spondylosis, otherwise negative. The MRI scan obtained on 12-2-06 at Baxter Regional Medical Center was reviewed and it does appear that she has a L5-S1 herniated nucleus pulposus, which is primarily central. The MRI scan of the cervical spine was also reviewed. There were only mild degenerative changes noted in the cervical spine.

Dr. Richardson assessed "58-year-old white female who has a HNP at L5-S1, which is likely causing her

radiculopathy....At this point, I think we should schedule her for an epidural steroid injection and if there is no improvement with this then she should have surgery with hemilaminotomy and diskectomy....I don't believe her pain is going to get better without surgical intervention."

Dr. Richardson noted on September 22, 2006, "She has a MRI that basically shows degenerative changes in her facet joints, as well as a possible small disc herniation at L5-S1....I am not exactly sure of the etiology of all of her back pain, but her leg pain has seemed to improve tremendously so I am going to send her for a discogram....It may be that she needs a fusion of this area to stop her back pain, as well as to decrease the lower extremity radiculopathy that she has."

A lumbar diskogram was taken on October 6, 2006, with the impression, "1. Concentric annular tears at L3-L4, L4-L5, and L5-S1 shown on the diskograms, more prominent at L3-L4 and L4-L5. 2. The patient's pain response demonstrated pain which was concordant with her usual pain almost exactly at L3-L4 and similar but not quite as intense at L4-L5."

Dr. Richardson stated on October 20, 2006, "She seems to be an excellent candidate for surgery....I think that

probably given her condition that she needs to proceed forth for a L3-S1 transforaminal lumbar interbody fusion and posterior spine fusion with instrumentation and application of bone morphogenic protein."

On November 2, 2006, Dr. Richardson performed an "L5-S1 transforaminal interbody fusion with posterior spine fusion and application of instrumentation in nonsegmental fashion from L5 to S1 with laminectomy decompression at L5-S1." Dr. Richardson's pre- and post-operative diagnoses were as follows: "1. Intervertebral disk disorder and bilateral sciatica. 2. Lumbosacral spinal stenosis. 3. Degenerative joint disease. 4. Lateral recess stenosis. 5. Diskogenic back pain."

Dr. Richardson noted on November 21, 2006, "Virginia is doing well and she states that her pain is well controlled. Her x-rays look excellent. The graft appears to be in the proper position and the screws are properly placed."

A pre-hearing order was filed on June 11, 2007. The claimant contended that she "sustained compensable injuries to her neck, back and left shoulder and is entitled to all related workers' compensation benefits." The respondents contended that the claimant "first reported a low back and

shoulder injury. The low back condition resolved and the claimant treated for the shoulder problem. The MRI of the shoulder did not reveal any new objective medical findings. The claimant then started treating for her shoulder. The Form C mentions only the shoulder injury. The statute of limitations bars the low back and the neck claims."

The parties agreed to litigate the following issues:

> 1. Compensability of the neck, back and left shoulder injuries.
> 2. Constitutional issues.
> 3. The issue of permanency is reserved.
> 4. The issue of temporary total disability compensation is reserved.
> 5. Whether claimant is entitled to reasonable and necessary medical treatment.
> 6. Statute of limitations.
> 7. Whether claimant is entitled to attorney fees.

A hearing was held on August 22, 2007. At that time, counsel for the claimant reserved the issue of reasonably necessary medical treatment.

The administrative law judge found, in pertinent part:

> 5. The claims for a neck and back injury are not barred by the statute of limitations.
> 6. The claimant's Motion to Recuse is denied and her constitutional challenges of the Act are found to be without merit pursuant to *Long v. Wal-Mart Stores, Inc.*, ___ Ark. App. ___ , ___ S.W.3d ___ (Ark. Ct. App. Feb. 21, 2007).
> 7. The claimant proved that she sustained compensable injuries to her left shoulder

and low back while lifting a patient on December 12, 2003 during and in the course of her employment with the respondent.
8. The claimant failed to prove by a preponderance of the credible evidence that she sustained an injury to her neck during and in the course of her employment with the respondent.

The respondents appeal to the Full Commission and the claimant cross-appeals

II. ADJUDICATION

A. Compensability

Ark. Code Ann. §11-9-102(4)(Repl. 2002) defines "compensable injury":

> (A)(i) An accidental injury causing internal or external physical harm to the body ...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). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16). The requirement that a compensable injury be established by medical evidence supported by objective findings applies only to the

existence and extent of the injury. *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997).

The claimant's burden of proof shall be a preponderance of the evidence. Ark. Code Ann. §11-9-102(4)(E)(i). Preponderance of the evidence means the evidence having greater weight or convincing force. *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

1. Neck

In the present matter, an administrative law judge found that the claimant did not prove she sustained a compensable injury to her neck. The Full Commission affirms this finding. The claimant testified that she felt pain in her shoulder and back after pulling a patient up in bed on December 12, 2003. The claimant filled out an accident report on December 12, 2003 indicating that she felt a sharp pain in her lower back. A Form AR-N the same day indicated that the claimant had injured her low back. A physician diagnosed low back strain but did not diagnose an injury to the claimant's neck or cervical spine. An MRI of the claimant's cervical spine was taken on February 3, 2004. The MRI showed osteoarthritis and multiple level degenerative disc disease, mild to moderate. There were

posterior protrusions at C3-C4, C4-C5, C5-C6, and C6-C7. The impression from the MRI included suspicion for a right-sided disc herniation at C5-C6 and a questionable right-sided disc herniation at C3-C4. The record does not demonstrate that any of the abnormalities shown on the February 3, 2004 cervical MRI were causally related to the accident occurring December 12, 2003. There is no evidence connecting the findings of the cervical MRI to the accident of December 12, 2003. *See Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). Moreover, Dr. McBride noted on February 20, 2004, "This study reveals two broad based disk bulges at C5-6 and C6-7; however, these are on the right side and her symptoms are on the left. There is certainly no pathology in her neck which would attribute to her left arm pain." Dr. McBride noted that the diagnostic cervical study was "unremarkable."

The instant claimant did not prove that she sustained an accidental injury causing physical harm to her neck or cervical spine. The claimant did not prove that she sustained an injury to her neck or cervical spine arising out of and in the course of employment or requiring medical services or resulting in disability. The claimant did not

sustain an injury to her neck or cervical spine caused by a specific incident identifiable by time and place of occurrence. Finally, the claimant did not establish a compensable injury to her neck or cervical spine by medical evidence supported by objective findings. *See Ford, supra*. The decision of the administrative law judge is affirmed.

2. Left shoulder

In the present matter, an administrative law judge found that the claimant proved she sustained a compensable injury to her left shoulder. The Full Commission affirms this finding. The claimant testified that she felt pain in her shoulder after pulling a patient on December 12, 2003. Claimant's Exhibit Five, the Accident Or Incident Report dated December 12, 2003, corroborated the claimant's testimony that she felt pain in her left shoulder following the accident. A physical therapist reported beginning December 19, 2003 that the claimant felt pain in her shoulder. An MRI of the claimant's left shoulder was taken on January 18, 2004. This study showed an "abnormal signal at the insertion of the rotator cuff which predominantly involves the humerus with minimal high signal change in the tendon. This may represent a partial avulsion injury of the

cuff.” Dr. McBride subsequently opined, after looking at the MRI scan, that the claimant had a small tear in her left rotator cuff. Dr. Oliver operated on the claimant’s shoulder in November 2005. Dr. Oliver’s surgical report confirmed that the claimant had a left rotator cuff tear.

The Full Commission finds that the claimant proved she sustained an accidental injury causing physical harm to her left shoulder. The claimant proved that the injury arose out of and in the course of employment and required medical services. The claimant proved that the injury was caused by a specific incident and was identifiable by time and place of occurrence on December 12, 2003. The claimant established a compensable injury to her left shoulder by medical evidence supported by objective findings. The objective medical findings included the rotator cuff tear reported by Dr. McBride and observed by Dr. Oliver. The left rotator cuff tear was causally related to the December 12, 2003 accidental injury. *See Ford, supra*. The decision of the administrative law judge is affirmed.

3. Low back

An administrative law judge found that the instant claimant proved she sustained a compensable injury to her

low back. The Full Commission does not affirm this finding. The claimant testified that she felt pain in her back after pulling a patient up in bed on December 12, 2003. A physician diagnosed back strain on December 12, 2003 but there were no objective medical findings noted and full recovery was expected. Dr. McBride reported on January 28, 2004 that the claimant's back symptoms had resolved. On January 24, 2006, Dr. Richardson noted that an MRI scan showed an L5-S1 herniated nucleus pulposus. The record does not show that the L5-S1 herniated nucleus pulposus reported in 2006 was causally related to the December 12, 2003 accident. The impression from a lumbar diskogram on October 6, 2006 was "1. Concentric annular tears at L3-L4, L4-L5, and L5-S1 shown on the diskograms, more prominent at L3-L4 and L4-L5." There is not even a scintilla of evidence before the Commission demonstrating that the abnormalities shown on the October 6, 2006 diskogram were causally related to the December 12, 2003 accident. *See Ford, supra*. Nor was the "intervertebral disk disorder" described by Dr. Richardson in November 2006 in any way causally related to the December 12, 2003 accident.

The Full Commission finds that the claimant did not prove she sustained an accidental injury causing physical harm to her low back or lumbar spine. The claimant did not prove she sustained an injury to her low back or lumbar spine which arose out of and in the course of employment and required medical services. The claimant did not establish a compensable injury to her low back or lumbar spine by medical evidence supported by objective findings.

Based on our *de novo* review of the entire record, the Full Commission affirms the administrative law judge’s finding that the claimant did not prove she sustained a compensable injury to her neck. We affirm the administrative law judge’s finding that the claimant proved she sustained a compensable injury to her left shoulder. The Full Commission reverses the administrative law judge’s finding that the claimant proved she sustained a compensable injury to her low back. The respondents on appeal have abandoned their argument that the statute of limitations barred the claim. *See Seay v. Wildlife Farms, Inc.*, 342 Ark. 503, 29 S.W.3d 711 (2000). The claimant has not proven that the administrative law judge or any sitting Commissioner should recuse from the case, and the claimant

has not proven that any relevant section of Act 796 of 1993 is unconstitutional. *See Long v. Wal-Mart Stores, Inc.*, 98 Ark. App. 70, ___ S.W.3d ___ (2007).

For prevailing in part on appeal, the claimant's attorney is entitled to a fee of five hundred dollars ($500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2002).

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. McKINNEY, Commissioner

Commissioner Hood concurs, in part, and dissents, in part.

CONCURRING AND DISSENTING OPINION

I must respectfully concur, in part, and dissent, in part, from the majority's opinion. I concur with the majority regarding the compensability of the claimant's shoulder injury. The majority, by affirming and adopting the Administrative Law Judge, finds that the claimant failed to prove the compensability of her neck or back injury, while finding that the claimant did prove her shoulder injury, all of which are related to

an incident which occurred on or about December 12, 2003. Based on a de novo review of the record in its entirety, I find that the claimant suffered a compensable neck, back, and shoulder injury on December 12, 2003 and is entitled to associated medical and temporary total disability benefits and, therefore, I must respectfully concur, in part, and dissent, in part.

History

The claimant worked for the respondent as a Licensed Practical Nurse (LPN) for approximately 33 years. The claimant testified that her job involved lifting patients into bed. The claimant testified that on December 13, 2003, she was lifting a patient who weighed over 250 pounds into bed. The claimant testified that at that time she felt pain in her left shoulder and lower back, and that the shoulder pain was greater at the time of the initial injury. The claimant testified that she went to the emergency room the next morning and that the respondent refused to pay for this emergency room visit. The claimant testified that the respondent sent her to its doctor, Dr. John Smith, who diagnosed the claimant with a back strain and did not

prescribe any medications. The initial medical report from Dr. Smith indicated the claimant was injured while lifting a patient at work and that she was restricted from lifting more than two (2) pounds at work. Dr. Smith did not use an x-ray or MRI in his diagnosis of a back strain. The claimant testified that Dr. Smith did not manipulate or rotate the claimant's shoulder in order to diagnose her condition.

The medical record from the physical therapist on December 22, 2003, the second visit to a medical professional by the claimant, notes that the claimant has a "complaint of pain with cervical spine." The Baxter Regional Medical Center medical report from December 29, 2003, notes that the date of the onset of pain was December 12, 2003. The medical record indicates the claimant reported pain in her cervical spine to the physical therapist on her third visit to any medical professional and two weeks after the initial injury, at this point.

The claimant testified that she then went to her family physician, Dr. Tammy Tucker at the North Arkansas Medical Center because she was in intense pain

and she was not able to drive the 150 miles necessary to see Dr. Smith. With Dr. Tucker, the claimant underwent an MRI. The claimant testified and the medical records indicate that the back pain she was experiencing was less intense with the assistance of pain medications.

The MRI taken February 3, 2004, less than two months after the claimant was injured, shows disc herniations at C3-C4 and C5-6 levels. The February 20, 2004 MRI report also noted "history of previous lifting injury."

The claimant testified that she was unable to pay for medical treatment until she was enrolled in Medicare. At that time, she was able to go to Dr. Travis Richardson on September 22, 2006. Dr. Richardson diagnosed "a L5-S1 herniated nucleous pulposus" using an MRI.

Discussion

The majority correctly found that the shoulder injury was compensable, but errs in finding that the claimant did not prove a compensable neck or back injury. For the claimant to establish a compensable injury as a result of a specific incident which is

identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. § 11-9-102(4)(A)(i) (Repl. 2002), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (4)(D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

There is no dispute that a specific incident injury occurred on December 12, 2003, during which the claimant sustained a compensable shoulder injury.

Claimant's Neck/Cervical Spine Injury

I find that the claimant has shown, by a preponderance of the evidence, that she also sustained a compensable specific incident neck injury during this

same incident. First, the claimant has presented proof by a preponderance of the evidence that her neck injury arose out of and in the course of employment. The phrase "arising out of the employment" refers to the origin or cause of the accident, so the employee is required to show that a causal connection exists between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). Here, the claimant credibly testified that the injuries she suffered originated from the December 12, 2003 incident where she was lifting an obese patient into bed to prevent them from falling. The claimant and witnesses testified that prior to the work-related injury, the only condition experienced in her neck was mild arthritis. Furthermore, the record completely lacks any evidence indicating that the claimant has suffered from neck problems prior to December 12, 2003.

The Arkansas Workers' Compensation Act does not require that the claimant have an immediate diagnosis and also does not require that the claimant insist that the doctor's history contain the gory details of the occurrence. Siders v. Southern Mattress

Co., 240 Ark. at 271, 398 S.W.2d 901 (1966). The claimant complained of pain in her cervical spine on December 19, 2003, during her second visit to any medical professional in this claim and the first medical professional to use any diagnostic procedures. The physical therapy report from one week after the initial injury stated:

> Her current complaint of pain is in the left mid scapular region...patient reporting pain with all directions of the *cervical spine*.... Most significant pain was reported with right rotation and right side bending of the *cervical spine*. Evaluation followed with moist hot pack and inferential electrical muscle stimulation to the lower *cervical* and upper thoracic region.... Patient's complaint of pain with *cervical spine*....

On her next visit to the physical therapist on December 29, 2003, it was noted:

> Today she was reassessed with patient reporting pain with cervical spine right side bending.... Today, she received cervical traction at 15 pounds for 10 minutes to help alleviate muscle tightness in the lower cervical and upper thoracic region....

The medical records show that the claimant underwent a cervical spine MRI on February 3, 2004, less than two months after the injury, only after going to her family physician. If a disability arises soon after an accident and is logically attributable to it, with nothing to suggest any other explanation for the employee's condition, a finding that a causal connection exists is supported by the preponderance of the evidence. Hall v. Pittman Construction Co., 235 Ark. 104, 357 S.W.2d 263 (1962). I find that the diagnosis of the cervical disc herniations are so closely related to the injuries received by the claimant on December 12, 2003, and without credible evidence that the injury was caused by some other source, it makes little sense to attribute the claimant's cervical spine injury to anything else. Therefore, based on the claimant's credible testimony and the medical records, I find that the claimant has established by a preponderance of the evidence that she sustained a compensable cervical spine injury on December 12, 2003.

The majority erroneously argues that the claimant's cervical spine MRI demonstrating objective

medical findings is not causally related to the accident occurring December 12, 2003. The respondent has not submitted any medical records dated prior to the injury that would relate the claimant's neck injury to anything but the December 12, 2003 incident. The claimant has submitted the initial accident report which shows the word "pain" circled in the upper left side of the claimant's torso, consistent with both the cervical spine and the rotator cuff injuries. I find that the claimant has shown, through the accident report, that there is a causal relationship between the neck injury and the December 12, 2003 incident. Although the medical records mention that the claimant's cervical spine herniations are not of the "pathology that would attribute to her left arm pain", such a pathology would be useless, as the claimant is not claiming left arm pain as an injury, the claimant is claiming a cervical spine injury, which has been shown through an MRI.

Claimant's Back Injury

I find that the claimant has proved by a preponderance of the credible evidence, in addition to her compensable shoulder and neck injuries, that she

also sustained a compensable back injury on December 12, 2003. Again, there is no dispute that a specific incident occurred at work on December 12, 2003. The claimant credibly testified that the back injury originated from the December 12, 2003 incident when she was lifting an obese patient into bed to prevent the patient from falling. On December 12, 2003, the claimant completed an accident report which indicated that one of the areas injured was her lower back. Additionally, the Form N filled-out by the employer mentions the claimant's lower back as her injury. Subsequently, the claimant was diagnosed with a back strain by the respondent-paid doctor, Dr. John Smith, on December 12, 2003 and by a physical therapist, Rowdy Kelly, on December 19, 2003. The physical therapy report from one week after the initial injury stated: "Patient reports that she was helping a patient back in bed when she injured her shoulder and low back.... She initially had pain in the lower back region, but her back pain has resolved with her medications...." On the Workers' Compensation Commission Form N, the injury reported was "lower back." I find that the claimant has

established that her back injury arose out of her employment by a preponderance of the evidence of record. Therefore, based on the claimant's credible testimony and the medical records, I find that the claimant has shown by a preponderance of the evidence that she sustained a compensable back injury on December 12, 2003.

In conclusion, I find that the claimant has met her burden of proof by the preponderance of the evidence for a compensable specific incident neck and back injury and, therefore, I must respectfully concur, in part, and dissent, in part.

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PHILIP A. HOOD, Commissioner