

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F601642 and F611860

DELIAH QUINNEY, EMPLOYEE	CLAIMANT
FEDERAL EXPRESS, INC., A SELF INSURED EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC, TPA	RESPONDENT

OPINION FILED JULY 30, 2008

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

Claimant represented by HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE JUDY ROBINSON WILBER, 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 July 20, 2007.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.

3. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable specific incident back injury while in the respondent's employ on June 11, 2005.

4. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury or aggravation by specific incident on February 2, 2006.

5. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable gradual onset back injury which manifested itself between June 11, 2005 and February 2, 2006.

6. Issues 4, 5, and 6 outlined herein are rendered moot.

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.

Quinney
F601642 & F611860

-3-

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 Hood dissents.

DISSENTING OPINION

From a de novo review of the record, I find that the claimant proved, by a preponderance of the evidence, that she sustained a compensable gradual onset back injury during the period June 11, 2005 through February 2, 2006. Therefore, I must respectfully dissent from the majority opinion denying the compensability of this claim.

The claimant was a long-time employee of the respondent employer, Federal Express. Her job was to load, unload, and deliver packages weighing up to 75 pounds. On Saturday, June 11, 2005, she was loading and unloading freight when she felt a "twinge" in her low back. The claimant testified that she was alone at the work site and had no one to tell about the injury at that time. She did not think that her injury was serious. She felt fine the next day, but on the following Monday, she experienced significant difficulties while walking from her house to an outbuilding to get a screwdriver. She immediately set up a doctor's appointment for the next day and called her

supervisor, Matt Ervin, and told him of her back problems. The claimant testified that she told Mr. Ervin that the problems had started when she was walking and also informed him of the incident at work where she had felt the twinge in her back. Mr. Ervin acknowledged that the claimant reported having problems with her back and that she was going to the doctor on the Monday in question, but he did not recall any statements by the claimant indicating that the problems were work related. The claimant continued to work and, according to her testimony, she felt fine and was able to perform heavy lifting and bending activities without taking medication.

In November of 2005, the claimant testified that her back problems began to "come and go". Eventually, she began to experience more frequent episodes of back pain which she associated with reaching and bending on the job. In addition, she began to have pain which radiated into her hip and leg. In December of 2005, she sought treatment with Dr. Beverly Foster, a chiropractic physician, and later that month with Dr. Fred Blankenship, an orthopedic surgeon. An

Quinney
F601642 & F611860

-6-

MRI was performed which showed a large herniated nucleus pulposus on the left at L5-S1. Dr. Blankenship thought the claimant would probably need surgery, so he referred the claimant to Dr. John L. Wilson, orthopedic surgeon, for a surgical consultation. Dr. Wilson kept the claimant off work for approximately one week and administered epidural steroid injections. When he released the claimant to return to work on January 19, 2006, he advised that if she had a recurrence of her problems, he would probably be rather quick to recommend surgery.

On February 2, 2006, the claimant was carrying a computer to someone's door when she twisted her back. This work related incident was not disputed. She sought additional medical treatment and was found to have exacerbated her back condition. The claimant returned to see Dr. Wilson and he recommended surgery, as he had previously indicated would be the case if the claimant suffered a recurrence of her problems. Surgery was performed by Dr. Wilson on May 15, 2006 on the L5-S1 disk. The claimant developed recurrent problems with the L5-S1 disk and had a

Quinney
F601642 & F611860

-7-

repeat surgery at that level on August 15, 2006 by Dr. J. Michael Calhoun, neurosurgeon.

Dr. Wilson was given a letter from the claimant detailing the circumstances surrounding her work-related incidents and asked for his opinion as to the causal relationship between the claimant's work activities and her back condition. Dr. Wilson concluded that the claimant's back problems were work related, as follows:

After reading Ms. Quinney's narrative it is obvious that this lady's problem started back in June 2005. She began to have pain a little more than 24 hours following a heavy day at work. She was walking. She did not have an injury. She was off for a while and went back to work. Her family physician, Dr. Barrow, felt that she had a lumbosacral strain. She was completely free of pain. She did not have leg pain at that time. In November 2005 she noted that she had pain in her back and down her left leg. This occurred when she was handling packages and taking boxes off the top shelf of her truck at FedEx. Apparently she informed her manager; however, this was peak work time and she was not allowed off work. They did supply her with an individual to work with her. When she came back from her holiday she could hardly walk. She advised her manager that she needed to see a doctor

Quinney
F601642 & F611860

-8-

and again was not allowed to do so because of the need to have her at work.

* * *

It appears obvious, according to Deliah's history, that her problem began in June 2005, whether or not this was due to her lifting at work or a mild lumbosacral strain. At any rate, she did completely recover from this. It was about five months when she began to have pain again. This time, down her leg and this involved lifting overhead at work. Apparently, there had been no other injury.

It is my opinion with a reasonable degree of medical certainty, based on Ms. Quinney's written note, that this is indeed a work related injury. (emphasis added)

Back injuries which are of gradual onset and are not caused by a "specific incident or are not identifiable by time and place of occurrence", as those terms are defined in Ark. Code Ann. §11-9-102(4)(A)(i), are compensable if the following prerequisites are established, by a preponderance of the evidence: (1)the injury caused internal or external physical harm to the body; (2)the injury arose out of and in the course of his or the employment; and (3)the injury was

the major cause of the disability or need for treatment. Ark. Code Ann. §11-9-102 (4) (A) (ii); §11-9-102(E) (ii). In addition, objective medical evidence is necessary to establish the existence and the extent of an injury, but it is not essential to establish the causal relationship between the injury and the job. Ark. Code Ann. 11-9-102(4) (D); Wal-Mart Stores, Inc. v. Van Wagner, 337 Ark. 443, 990 S.W.2d 522 (1999).

From a fair review of the evidence of record, it is obvious that the claimant satisfied all of the elements required to prove the compensability a claim for a gradual onset back injury. The claimant had a lifting incident on June 11, 2005 while performing her job duties, which required medical treatment. In November 2005, the claimant had even more significant difficulties with her back, after performing work-related activities, which required additional medical treatment and resulted in a diagnosis of a herniated disk by MRI. On February 2, 2006, the claimant had a twisting incident, in the course of her employment, and returned to the doctor. Surgery was performed for the

herniated disk which was discovered in November 2005. When fully advised of the facts of this case, Dr. Wilson confirmed that the claimant's back injury was causally related to her work. Dr. Blankenship's opinion does not conflict with Dr. Wilson's conclusions. In fact, there is no medical opinion of record contradicting Dr. Wilson's opinion. In light of these facts, the claimant has proved, by a preponderance of the evidence, that the major cause of her herniated disk and the surgery performed for the treatment of that condition was causally related to numerous exertions in the course of her employment from June 11, 2005 through February 2, 2006.

For the reasons stated above, I find that the claimant proved, by a preponderance of the evidence, all of the prerequisites necessary to establish a compensable gradual onset back injury. Therefore, I must respectfully dissent from the majority opinion denying the compensability of this claim.

PHILIP A. HOOD, Commissioner