

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F806434

DEBRA FLOERCHINGER, EMPLOYEE	CLAIMANT
UNIVERSITY OF ARKANSAS FOR MEDICAL SCIENCES, EMPLOYER	RESPONDENT
PUBLIC EMPLOYEE CLAIMS, CARRIER	RESPONDENT

OPINION FILED NOVEMBER 5, 2009

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

Claimant appeared pro se.

Respondent represented by HONORABLE RICHARD SMITH, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The claimant appeals a decision of the Administrative Law Judge filed on April 30, 2009, finding that the claimant failed to prove by a preponderance of the evidence that she sustained a compensable injury. Based upon our de novo review of the record, we find that the claimant failed to meet her burden of proof. Accordingly, we affirm the decision of the Administrative Law Judge.

The claimant was employed by the respondent-employer as a patient representative in the outpatient

center. The claimant had worked in that position since 2003. Prior to that, the claimant was the Director of Student Activities and Housing and Patient Representative. In 2000, the claimant and four other co-workers were exposed to debris and fumes from a construction site. The respondent employer paid for the claimant's treatment at the emergency room. The claimant's health history includes anxiety, asthma, migraine headaches, chest pain, allergies and heart palpitations.

In September, 2007, the claimant's office was moved and her work area was in a deserted elevator shaft with no ventilation. She was required to keep the door closed because money was kept there and it was also a firewall. In December 2007 and January 2008, the area was also used as a store room for 96 boxes of files.

In January of 2008, the claimant began to feel ill with dizziness, coughing, breathing problems, and heart palpitations. She sought treatment from her family physician, Dr. Hudson, who ordered a carotid ultrasound on January 30, 2008 which was normal. The claimant continued to work but developed more symptoms of ringing in her ears, tingling face, numbness in her left arm, and a pop in her neck. On February 8, 2008, the claimant went to the

emergency room where a CT scan of the brain was performed. The claimant was diagnosed with hemoplegic migraine headaches. The claimant returned to Dr. Hudson and he referred her to a cardiologist. The claimant was seen by Carol Davidson, APN, in March, 2008. The claimant was prescribed blood pressure medication which affected her vision and made her heart palpitations worse. The medication also caused nausea, requiring two more visits to the ER.

The claimant contacted the Occupational Health and Safety department at the respondent employer. An industrial hygienist studied the claimant's work environment and made suggestions to her supervisor on ways to improve the claimant's working conditions. Presently, the claimant is required to work only two days out of five in the area and she is allowed to leave the door open. She is also allowed to work in the hallway instead of sitting in the room. Since these changes were made, the claimant's symptoms have improved.

April 30, 2008, the claimant saw Dr. Hudson and he changed her asthma medication.

The claimant seeks payment of her medical expenses from January through April, 2008. She has not requested

payment of any other benefits. The claimant's group insurance, Qual-Choice, has paid some expenses on this claim and the claimant has incurred some out-of-pocket expenses.

Ark. Code Ann. §11-9-102(4)(A)(i)(Supp. 2005) defines "compensable injury" as "[a]n 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. Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002). 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). An injury occurs "in the course of employment" when it occurs within the time and space boundaries of the employment, while the employee is carrying out the employer's purpose, or advancing the employer's interest directly or indirectly. City of El Dorado v. Sartor, 21 Ark. App. 143, 729 S.W.2d 430 (1987).

There is no presumption that a claim is indeed

compensable. O.K. Processing, Inc., et al v. Servold, 265 Ark. 352, 578 S.W.2d 224 (1979). Crouch Funeral Home, et al v. Crouch, 262 Ark. 417, 557 S.W.2d 392 (1977). The injured party bears the burden of proof in establishing entitlement to benefits under the Workers' Compensation Act, and must sustain that burden by a preponderance of the evidence. See Ark. Code Ann. § 11-9-102(4)(E)(i)(Repl. 2002); Clardy v. Medi-Homes LTC Serv. LLC, 75 Ark. App. 156, 55 S.W.3d 791 (2001). In other words, in a workers' compensation case, the claimant has the burden of proving by a preponderance of the evidence that her claim is compensable, ie., that her injury was the result of an accident that arose in the course of her employment and that it grew out of, or resulted from the employment. Carman v. Haworth, Inc., 74 Ark. App. 55, 45 S.W.3d 408 (2001); Ringier Am. v. Combs, 41 Ark. App. 47, 849 S.W.2d 1 (1993). Further, the claimant must show a causal relationship exists between her condition and her employment. Harris Cattle Co. v. Parker, 256 Ark. 166, 506 S.W.2d 118 (1974).

It is well established that the party having the burden of proof on the issue must establish it by a preponderance of the evidence. Ark. Code Ann. § 11-9-704(c)(2)(Repl. 2002). A preponderance of the credible

evidence of record means "evidence of greater convincing force." Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995); See also, Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 206 S.W.2d 42 (1947). In determining whether a claimant has sustained his or her burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. § 11-9-704; Wade v. Mr. C Cavanaugh's, 298 Ark. 363, 768 S.W.2d 521 (1989); and Fowler v. McHenry, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

The evidence demonstrates that the respondent employer sent Industrial Hygienist, Michael Knox, to evaluate the claimant's work environment. He issued a report on sick building syndrome dated April 15, 2008. Mr. Knox explained that sick building syndrome can be caused when a building is operated or maintained in a manner that is inconsistent with its original design or prescribed operating procedures. Other causes include chemical contaminants like adhesives, carpeting, upholstery, wood products, copy machines and cleaning agents.

The claimant testified an abandoned elevator shaft was being used as office space. Paper products were also being stored in the space. The claimant's Form AR-N and

written report of injury also described an odor in the space especially strong after it had rained. These facts certainly fit the criteria described in Mr. Knox's report for sick building syndrome. Mr. Knox observed there was no supply or return air in the claimant's office and the temperature at 10:50 A.M. was 75.3. He noted that high heat dries out sinuses, causing headaches. He measured the air quality and concluded that more than 94% of the total particulate count in the air was small enough to reach the bronchiole passages. Mr. Knox recommended installation of air conditioning and removal of the storage boxes. He also recommended spending less than 20 minutes in the room, acknowledging that a person with allergies or hypersensitivity issues might not be able to tolerate the room at all.

The evidence demonstrates that the claimant has a history of medical problems. The claimant was examined by Dr. Taniegra on October 11, 1999 in preparation for dental work. The claimant told the doctor she developed occasional heart palpitations after taking a weight loss medication, Fen-Phen. A 1996 echocardiogram showed "borderline concentric left ventricular hypertrophy with mild septal hypokinesis," but there was no evidence of mitral valve

prolapse. She also gave the doctor "a history of frequent nasal congestion when her workplace was dusty, resolved when this was cleaned up." On October 26, 1999, the claimant was given a Holter monitor to wear and had an echocardiogram. The results proved to be abnormal so Dr. Taniegra referred the claimant to a cardiologist.

Over a year later, the claimant contacted Dr. Taniegra's office on March 20, 2001 with a report of chest pain radiating to her arms and neck. In a report dated October 18, 2001, the claimant reported stress related headaches. On December 31, 2001 the claimant was treated for pneumonia.

On April 23, 2002, the claimant saw the doctor for complaints of stress-related chest pain, palpitations and left arm numbness. She was prescribed nitroglycerin, baby aspirin, and anti-anxiety medication. A treadmill stress test taken June 4, 2002 was normal. Two years later on March 11, 2004 the claimant was treated for a facial rash and wheezing which developed after she walked past a group of cigarette smokers. She was prescribed Clarinex. The report also states, "she was previously evaluated by the cardiologist for atypical chest pain which was negative and is no longer experiencing this problem."

Several months later, the claimant saw her physician on September 3, 2004 for a facial rash and tightening of the throat which she attributed to the air-conditioning at work. She was advised to take Claritin or Benadryl. The claimant returned to the doctor on December 15, 2004 for allergy symptoms. In September and October, 2006, the claimant visited her doctor for stress related nausea and headaches.

The claimant saw a physician for palpitations on January 30, 2008 and diagnostic tests were ordered. She related hearing her heart beat in her left ear and seeing flashes of light. Her exam revealed carotid bruit, tinnitus and elevated blood pressure. Vascular testing on February 6, 2008 proved normal.

On February 8, 2008 the claimant reported right arm numbness and tingling in her fingers. She was diagnosed with angina and anxiety. Another report dated February 8 indicates left arm sensations and palpitations. This report states the claimant has a history of asthma/COPD; mitral valve regurgitation and allergies. An ECG performed was normal. On February 9, 2008 a CT scan of the brain was performed and interpreted as normal.

On February 14, 2008 the claimant was treated for

a rash that developed where the EKG stickers had been placed on her for testing. On February 27, 2008, she had an echocardiogram and Doppler study performed which were normal with the exception of "distolic dysfunction with impaired relaxation," and "atrial tachycardia." A report dated March 5, 2008 mentions worsening palpitations. She was prescribed medications and advised to keep a diary of her episodes.

That report stated as follows:

Patient has long standing h/o of 'fluttering in chest' associated with migraines, work environment, stress and air quality. She states the palpitations have been getting worse over the last several months. She has past history of taking Fen/Phen. She has multiple echocardiograms done over the past several years and was told by an outside physician that his (sic) had mitral valve prolapse. She recently had an echocardiogram done at UAMS in which the only abnormality noted was diastolic dysfunction with impaired relaxation. Her mitral valve and tricuspid valve showed normal morphology with trace MR and TR. Her EKG done on 2/8/08 showed normal sinus rhythm. Her event monitor showed she was experiencing atrial tachycardia with rates up to 133 bpm. She reported symptoms at that time.

It was noted that the claimant was "...TEARFUL. CRIED WHEN DISCUSSING JOB RELATED STRESS ISSUES RELATED TO WORK ENVIRONMENT."

On March 7, 2008, the claimant sought treatment at the emergency room at UAMS for diarrhea and dehydration. She returned to the emergency room on March 9, 2008. On March 11, 2008, the claimant was seen for follow up. The report from that date stated:

Have discussed in detail the effect of metoprolol as a beta-blocker and typical side effects. We discussed how lorazepam could be beneficial in these situations but would not treat the tachycardia directly. Her symptoms may well been due to the combination of acute Viral illness at the same time she started the metoprolol.

Dr. Hudson treated the claimant for a cough and palpitations on April 1, 2008. His report stated as follows:

She has now come to realize that many of her symptoms developed after she had returned to her office/room in the Outpatient Center. There are no vents present in this room. The walls are cement and they are not covered with paint. This was previously used as a storage room. She has contacted on campus

Occupational Safety and Health to have the room evaluated. She relates she moved in to the office in July of 07. Approximately 96 file boxes of old records were moved in to the office in January of 2008. Some of these records are 15 years old. She relates her symptoms began in Late January or early February. She essentially has been having palpitations and migraine headaches. She has had an extensive evaluation including several ER visits. Today is Tuesday. She states last Friday she had the worst migraine she has ever had. She left the office after about 10 a.m. She took some Excedrin, and felt better on Saturday. To (sic) return to the office on Monday socially developed (sic) cough and palpitations and headaches that lasted all day. She had to go home and go to bed. Today she met with the occupational safety came (sic). She left the room at 11 a.m. and was having palpitations and headache there (sic) now improved. It is approximately 3 p.m. in the afternoon.

The evidence demonstrates that the claimant has pre-existing allergies, asthma and other medical problems. A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined

with the disease or infirmity to produce the disability for which compensation is sought. See, Nashville Livestock Commission v. Cox, 302 Ark. 69, 787 S.W.2d 664 (1990); Conway Convalescent Center v. Murphree, 266 Ark. 985, 588 S.W.2d 462 (Ark. App. 1979); St. Vincent Infirmary Med. Ctr. v. Brown, 53 Ark. App. 30, 917 S.W.2d 550 (1996). The employer takes the employee as he finds him. Murphree, supra. In such cases, the test is not whether the injury causes the condition, but rather the test is whether the injury aggravates, accelerates, or combines with the condition. However, although a disabling symptom of a pre-existing condition may be compensable if it is brought on by an accident arising out of and in the course of employment, the employee's entitlement to compensation ends when his condition is restored to the condition that existed before the injury unless the injury contributes to the condition by accelerating or combining with the pre-existing condition. See, Ark. Power & Light Co. v. Scroggins, 230 Ark. 936, 328 S.W.2d 97 (1959).

The evidence shows that the claimant was assigned to work in an unventilated, hot, damp elevator shaft also used to store old files. The employer's industrial hygienist tested the air quality and concluded the

particulates in the air could be inhaled. He recommended changes that it appears, according to the testimony of the claimant, were not implemented. Instead, she chose to move her work station to the hallway. The medical evidence demonstrates that tachycardia is the only objective medical evidence of any injury or illness in this case. The claimant's palpitations have been associated in the past with anxiety and stress. The claimant has failed to show there is a causal connection between her health problems and her work. To establish the existence and extent of an injury, is not essential to establish a causal relationship between the injury and the work related accident. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. App. 443, 990 S.W.2d 522 (1999). Except in the most obvious cases where causation is established through common sense observation and deduction, the existence of a causal relationship may require the assistance of expert medical evidence. Cotton v. Ball & Prier, Full Commission Opinion, September 23, 1997 (Claim No. E512437); Jeter v. B & R McGinty Mechanical Co., Full Commission Opinion, March 6, 1997 (Claim No. E208256), Affirmed by the Court of Appeals, See, Jeter v. B & R McGinty Mechanical Co., 62 Ark. App. 53, 968 S.W.2d 645 (1995); and Jackson v. Bosley Construction, Inc., Full

Commission Opinion, March 6, 1997 (Claim No. E009401). "To be sure, there will be circumstances where medical evidence will be necessary to establish that a particular injury resulted from a work-related incident but not in every case." Van Wagner, supra. There is simply no evidence, demonstrating a causal connection.

Simply put, we cannot find evidence that the claimant's working conditions aggravated her pre-existing conditions. As such, we must find that the claimant failed to meet her burden of proof. Accordingly, we hereby affirm the decision of the Administrative Law Judge. This claim is denied and dismissed.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood Dissents.