

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H005785

DONNA GEELS, Employee	CLAIMANT
FRIENDSHIP COMMUNITY CARE, INC., Employer	RESPONDENT
ATA WC TRUST, Carrier	RESPONDENT

OPINION FILED MARCH 7, 2023

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Russellville, Pope County, Arkansas.

Claimant unrepresented and appearing PRO SE.

Respondents represented by MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On December 8, 2022, the above captioned claim came on for a hearing at Russellville, Arkansas. A pre-hearing conference was conducted on November 29, 2022, and an Amended Pre-hearing Order was filed on November 29, 2022. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The relationship of employee-employer-carrier existed between the parties on August 6, 2020.
3. The respondents have controverted the claim in its entirety.

4. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$310.00 for temporary total disability benefits and \$233.00 for permanent partial disability benefits.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether Claimant sustained a compensable COVID-19 illness on August 6, 2020, which include symptoms listed in Claimant’s Contention No. 2.

2. Whether Claimant is entitled to medical treatment.

3. Whether Claimant is entitled to temporary total disability benefits from April 5, 2022, to a date yet to be determined.

4. Whether Claimant sustained a compensable consequence of her alleged COVID-19 illness in the form of depression and anxiety.

5. Respondents’ entitlement to credit for short term disability benefits.

Claimant’s contentions are:

“1. The Claimant, Donna Geels, contracted COVID-19 while on the job on August 6, 2020, while working at a patient’s home in New Blaine, Arkansas.

2. Despite initially accepting the Claim, the Respondents controverted this matter following her diagnoses with post COVID syndrome (specific complications included, but are not limited to: ANA, dyspnea, and COPD).

3. The Claimant contends that she is owed medical benefits and Temporary Total Disability Benefits from January 27, 2022, to a date yet to be determined.

4. Due to the controversion of entitled benefits, the Respondents are obligated to pay one half of the Claimant’s attorney’s fees.

5. Claimant reserves the right to raise additional contentions at the hearing of this matter.”

Respondents’ contentions are:

“Respondents contend that Claimant did not suffer a compensable injury on or about 8/6/20. Respondents contend that Claimant’s need for medical treatment is not related to a compensable injury and that her problems predated any claimed injury or are personal in nature and not associated with an injury. Respondents also contend the medical documentation does not support the need for medical treatment or the entitlement to benefits associated with an alleged exposure.”

The claimant in this matter is a 61-year-old female who alleges to have sustained a compensable COVID illness on August 6, 2020. The claimant was an in-home care worker for the respondent at the time and was providing in-home patient care for a particular client during that timeframe. The claimant described her job duties during this timeframe on cross examination as follows:

Q Tell the Judge, if you would, just briefly what your job entailed there.

A My job entails setting an example for good behavior. Assisting in anything they are not physically capable to do. Transporting them to doctor’s appointments. Taking them to get groceries, to get shoes. Whatever their general needs would be.

Q And at the time in question, this would have been August of 2020, you were working with a Richard Bower; is that correct?

A Yes, ma’am.

Q All right. As far as your work with him, the things that you just testified about, that is what you would do for Mr. Bower; is that right?

A Yes, ma’am.

Q He is in his ‘60s; is that correct?

A Yes, ma’am.

Q So you would just assist him, but you told me in the deposition that you didn’t have to do anything physical with him. You didn’t have to lift him; is that right?

A I didn't have to lift him. I had to help him lift objects because he can't use one arm.

Q But mostly it was helping him learn to cook or do things like that; is that right?

A Yes, ma'am.

Q He usually wore a mask prior to August 6th; is that right?

A Usually.

Q Okay. And you told me in your deposition that before August 6th, you always wore your mask and you had gloves when you went into his home; is that right?

A Yes.

Q And I assume that you would have maintained that six-foot distance that was recommended during that time frame, is that right?

A As best I could, yes.

It is the claimant's allegation that the client she was assisting in his home for the respondent/employer had out of town family visit the client's home during the time she was there. Those family members were later found to have had COVID. The claimant alleges that since she was exposed to COVID, she tested and was found to be positive and restricted from work. The claimant also alleges that she suffered specific complications following her COVID diagnosis including ANA, dyspnea, and COPD.

It is the claimant's burden to prove that she suffered a compensable COVID illness on or about August 6, 2020, as she has alleged. In order to do so the claimant must prove the existence of objective medical evidence under Arkansas Code Annotated §11-9-102(4)(D). The claimant is required to establish the existence of an injury based on medical evidence supported by objective

medical findings as described in Arkansas Code Annotated § 11-9-102(16)(A)(i). Objective findings cannot come under the voluntary control of the patient.

The claimant in this matter is unable to meet her burden. I find no positive COVID test results regarding the claimant in any of the medical records submitted into evidence. I do find two negative COVID or coronavirus tests found at Respondents Exhibit 1, page 57 and page 58, dated September 21, 2020, and December 14, 2020, respectively. In fact, those two negative test reports appear to be the only medical records submitted into evidence from the year 2020. Two pages of medical evidence found at Claimant's Exhibit 1, pages 1 and 2, do mention COVID. In fact, page 1 of Claimant's Exhibit 1 appears to be from July 7, 2022, as a note on the bottom left of that page indicates that is the date of imaging. This medical record purports to be from Cardiology Associates of North Central Arkansas located in Russellville, Arkansas. Handwritten in the top right corner of that same document is the name Dr. Rasool. In the History of Present Illness portion of that medical record, it in part states "according to her, she had bad COVID in 2021." The next medical record found at Claimant's Exhibit 1, page 2, has no area that I can find that indicates when this medical record was created or when the claimant was seen. However, it does indicate that the record is from Millard-Henry Clinic of Russellville, and again, written in the top right-hand corner is a name, Dr. Schoenberger. That undated medical record, in the History of Present Illness portion, in part states "she became ill with COVID two years ago, but was only treated [sic] with oral antibiotics." The claimant does place into evidence some mental health assessments which do indeed mention COVID but are not related to any testing or dates of positive tests for COVID or the coronavirus. The medical evidence in this matter is simply void of any objective medical findings that the claimant suffered COVID illness or coronavirus on or about August 6, 2020, as she has alleged. While I do realize, and the claimant has pointed out in

her brief to the Commission, that rules and restrictions were relaxed during this time period of 2020, particularly for front-line workers, and while the state of Arkansas participated in that, there was never any relaxing of Arkansas Code Annotated §11-9-102 regarding the requirement for objective findings to establish the existence of the injury that the claimant alleges here of COVID or the coronavirus. As such, I find that the claimant has failed to meet her burden of proof that she suffered a compensable COVID illness on or about August 6, 2020.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on November 29, 2022, and contained in an Amended Pre-hearing Order filed November 29, 2022, are hereby accepted as fact.

2. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable COVID-19 illness on or about August 6, 2020, which included symptoms listed in Claimant's Contention No. 2.

3. The claimant has failed to prove her entitlement to medical treatment.

4. The claimant has failed to prove her entitlement to temporary total disability benefits from April 5, 2022, to a date yet to be determined.

5. The claimant has failed to prove she sustained any compensable consequence of her alleged COVID-19 illness in the form of depression and anxiety.

6. The respondent's request for a credit for short-term disability is moot as the claimant failed to prove her alleged illness compensable.

ORDER

Pursuant to the above findings and conclusions, I have no alternative but to deny this claim in its entirety.

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**