

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G808401

PATRICIA A. WASHINGTON, EMPLOYEE	CLAIMANT
LIPSCOMB OIL COMPANY INC., EMPLOYER	RESPONDENT NO. 1
FEDERATED MUTUAL INSURANCE COMPANY, CARRIER/TPA	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED MARCH 17, 2021

A hearing was held before ADMINISTRATIVE LAW KATIE ANDERSON in Jefferson County, Pine Bluff, Arkansas.

Claimant, Ms. Patricia Washington, *pro se*, appeared at the hearing. Ms. Washington resides in Gould, Arkansas.

Respondents No. 1 were represented by Mr. Eric Newkirk, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 was represented by Mr. David Pake, Attorney at Law, Little Rock, Arkansas. Mr. Pake waived appearance at the hearing.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on December 18, 2020, in Jefferson County, Arkansas. A Pre-Hearing Order was previously entered in this case on November 5, 2020.

The following stipulations were submitted by the parties. I hereby accept the following proposed stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employee-employer-carrier relationship existed on October 30, 2018, when Claimant sustained compensable injuries to her right hand and right lower leg.

3. Claimant was earning sufficient wages to entitle her to a temporary total disability/permanent partial disability rate of \$329.00/\$247.00.
4. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

By agreement of the parties, the issues to be litigated at the hearing were as follows:

1. Whether Claimant sustained additional compensable injuries other than the right hand and right lower extremity on October 30, 2018.¹
2. If Claimant sustained additional compensable injuries, the extent to which benefits would be owed beyond those previously paid to Claimant.

CONTENTIONS

Claimant:

It appears that Claimant contends that she sustained additional compensable injuries when she fell at work on October 30, 2018, while she was preparing breakfast for the next morning. Claimant alleges that when she was walking toward the freezer shelf where the hash browns were located, she slipped and fell on ice. Claimant alleges that her hand was bruised and red and that she had a large knot on her leg that was very painful. She also sustained bruises on her legs and bottom. At the hearing, Claimant asserted that in addition to her compensable surface injuries to her right hand and right shin, for which Respondents accepted and paid benefits, she also sustained injuries to her back and legs.

Claimant appears to also contend that she was not “well represented” and felt that the “whole truth was not told.” Claimant further contends that she is entitled to all past and future medical bills. Lastly, Claimant contends that she is entitled to compensation for “negligence for not keeping [her] safe.”²

Respondents #1:

Respondents contend that Claimant was involved in a work incident on October 30, 2018, when she fell in a freezer. Although Respondents initially accepted the claim as compensable and furnished related medical treatment and indemnity benefits, there were no objective abnormalities actually observed and documented by any treating medical provider other than the Claimant's contusions/abrasions to her right hand and right lower extremity. The Claimant's Form AR-C suggests Claimant also sustained injuries to her

¹ At the hearing, the parties clarified that the injuries sustained by Claimant to her right hand and right lower leg were surface injuries, in the form of contusions and abrasions. Respondents accepted as compensable only those surface injuries to her right hand and right lower leg, as outlined in the Form AR-2. At the hearing, Claimant alleged that she had also sustained compensable injuries to her back and legs.

² At the hearing, Claimant stated that she understood that her claim of negligence by Respondents was not a proper issue for the Commission. Therefore, the only issue addressed at the hearing was whether she also sustained injuries to her back and legs as a result of her October 30, 2018, fall at work.

left lower extremity and back/spine. Respondents contend that there are no objective medical findings in connection with those body parts to support compensability.

Furthermore, to the extent there are any purported objective abnormalities contained in the medical records pertaining to the left lower extremity or the Claimant's back/spine, those were pre-existing in nature and/or not otherwise causally connected to the work incident. Similarly, the Claimant's initial complaints were only in connection with her right hand and right lower extremity and no other body parts.

Alternatively, in the event other objective medical findings are somehow deemed to be in existence in connection with the left lower extremity or back/spine which are traceable to the work incident/event, the Respondents contend that no indemnity benefits would be owed. After all, even when the Claimant was placed on modified duty work restrictions, those restrictions were accommodated by the Respondent Employer, so no indemnity benefits would be in play even in the event minimal objective medical findings are somehow determined to be related to the incident with regard to other body parts. Likewise, Respondents contend that there are no findings sufficient to support a permanent anatomical impairment rating to any body part and, to the extent any such findings were to exist, the major cause of any such findings would be non-work related and thus, not compensable.

By way of further alternative contentions, the Respondents assert an offset for any group medical or disability policy which has paid benefits to or on behalf of the Claimant, to the extent allowed under Arkansas law, as well as an offset for any unemployment benefits paid to the Claimant, to the extent allowed under Arkansas law and in connection with any such benefits or beyond those which have already been furnished by the Respondents.

Respondent #2:

Respondent #2 offered the following contentions:

1. That the employer-employee-insurance carrier relationship existed on 10/30/2018;
2. That Claimant sustained compensable contusions/abrasions to her right hand and lower leg;
3. That Claimant's average weekly wage was \$493.34, computing to compensation rates of \$329/\$247;
4. That Claimant's MMI date was unknown for her injuries;
5. That the Trust Fund deferred to litigation on the compensability issue; and
6. That MMI for the right hand and right leg needed to be established.

The record consists of the hearing transcript of December 18, 2020, and the documents contained therein.

DISCUSSION

During the hearing, Ms. Washington (Claimant, used interchangeably herein) was the only witness to testify.

Claimant was sixty-two (62) years old at the time of the hearing. She testified that the majority of her work experience was in the food service business. She stated that she had worked on and off for Respondent-Employer (Filling Station 46, used interchangeably herein) for sixteen (16) years. Her responsibilities over the years had included cooking, cleaning, preparing food, and supervising.

On the day of the accident, October 30, 2018, Claimant had worked for Respondent-Employer that morning and left that afternoon to attend a training session (unrelated to her employment). After the training session, Claimant returned to the Filling Station to prepare breakfast for the next morning. When she was walking to a shelf in the freezer, she slipped and fell on some ice. She testified that her leg “went under the small shelf and [she] tried to brace [her]self with [her] hand...” She said that she fell “pretty hard.”

Claimant testified that she left work after her fall because her hand was painful and was starting to bruise, and a large knot had appeared on her leg. She sent her supervisor, the manager, and the district manager a text message about her fall and included photos of her injuries.

Claimant stated that she sought medical treatment later that day at Dumas Hospital. An x-ray of her hand and arm revealed no acute injury. Claimant did not believe that hospital staff took diagnostic images of her leg because her leg, while bruised, did not appear to require further testing. She was released, and instructed to rest, elevate, and ice her leg. Although Claimant stated that she was still having symptoms, she returned to work the next day.

Claimant testified that she began having pain in her left leg the following Saturday, November 3, 2018, approximately four (4) days after her fall. She described waking up at one o'clock in the morning with tingling and numbness in her left leg. She was able to go back to sleep, but when she woke the next morning, she was unable to walk on her leg. She feared that she had suffered a stroke. Her daughter took her to the hospital, where she was examined and diagnosed with left foot drop.

Claimant testified that the week after her fall, she began experiencing tenderness in her low back. She explained that her back was not painful, but it was tender to the touch. She also stated that she had not had any prior treatment on her back. Claimant also agreed that the MRI of her lumbar spine was normal, and her follow-up nerve conduction study results were also normal. She also agreed that no doctor had identified an objective abnormality with regard to her back and spine.

Furthermore, Claimant testified that she eventually began to have pain in her right leg, but she was unable to remember the date that the pain began.

She also stated that she did not seek any medical treatment in the past year. However, she testified that she believed that at the time of the hearing she needed additional medical treatment for her low back and leg pain, as well as problems with incontinence and constipation.

On cross-examination, Claimant agreed that on October 30, 2018, after her fall, she was having symptoms on her right leg (shin area only) and her right arm and hand, where bruising or abrasions were visible. Claimant also agreed that x-rays performed on her right arm, hand, and right leg showed no fractures and that she was diagnosed with right wrist sprain and contusions to her right shin.

Claimant agreed that she returned to work at full duty on Wednesday (the day after her fall at work), as well as Thursday and Friday, and that she was not having any problems with her left side or left leg during that time.

When questioned by Respondents' Counsel as to her left leg symptoms, she stated that she had received treatment for symptoms of burning and discomfort in her left leg prior to her fall at work. Claimant also agreed on cross-examination that she reported to the hospital staff on Saturday a history of left foot drop. She also agreed that she was having trouble controlling her left foot.

Claimant also admitted that during her deposition testimony she stated that when she woke on Saturday, November 3rd with left leg tingling and numbness, she had no reason to believe that her fall at work played any role in the symptoms she was having that Saturday morning. Claimant agreed that at the time of her deposition, she did not have a medical opinion connecting her symptoms on that Saturday morning to her fall at work.

Claimant testified that after her October 30, 2018, fall, she was off work until November 13, 2018. Since that time, she had continued to work for Respondent-Employer for the last two (2) years and was currently still employed at Filling Station 46. She was still working the same number of hours and had received a couple of wage increases. Claimant testified that although she had submitted work restrictions to Respondent-Employer, those restrictions had not been followed. However, when questioned by Respondents' Counsel as to whether Claimant had provided any medical records at the hearing that contained work restrictions documented by a physician, she stated that she had not. Ultimately, Claimant admitted that she had continued to work for Respondent-Employer for the last two (2) years at full-duty capacity without any restrictions.

Claimant testified that she had had health insurance for approximately one (1) year and that she still had health insurance it at the time of the hearing. However, even after she obtained health insurance, she testified that she had not sought any treatment for her symptoms.

Medical Exhibits:

There were only three (3) occasions when Claimant presented for medical care.

The October 30, 2018, medical records showed that Claimant presented at Delta Memorial Hospital in Dumas, Arkansas, with complaints of a right leg and right hand injury. Claimant's physical examination revealed pain in her right wrist and swelling in her right shin. An x-ray of her right wrist showed no evidence of an acute fracture or dislocation. X-rays of her right tibia and fibula, as well as of her right forearm, were unremarkable. She was assessed with a right leg hematoma and a right wrist sprain. She was instructed to rest, ice, and elevate the leg, and to use over-the-counter medication for pain.

The November 3, 2018, medical records showed that Claimant presented at the emergency room with orthopedic/musculoskeletal complaints, specifically a left "foot drop," after a recent fall. An MRI of her lumbar spine yielded normal results with slight foraminal narrowing along L5-S1. Claimant's physical examination showed significant and diffuse weaknesses in left lower extremity when compared to right lower extremity. Records also showed that Claimant was unable to completely "fire" her left lower extremity muscles in "left gastric, left quads, left hamstrings," for which Claimant was sent for further evaluation and treatment. Claimant's right lower extremity was normal in strength and function. Claimant was diagnosed with left foot drop, for which further evaluation was recommended.

The December 28, 2018, medical record from Dr. Paul Davis showed that Claimant’s nerve conduction studies yielded normal results. A hand-written note on the document also indicated that, “Dr. Davis says mild neuropathy only.”

There were no additional medical records provided.

ADJUDICATION

A. Compensability:

Claimant contends that she sustained additional compensable injuries to her low back and legs when she fell on ice in a freezer at work while performing her employment duties for Respondent-Employer at Filling Station 46. Although Respondents initially accepted the claim as compensable and furnished related medical treatment and indemnity benefits, as outlined in Respondents’ Form AR-2, Respondents contend there were no objective abnormalities actually observed and documented by any treating medical provider other than Claimant’s contusions/abrasions to her right hand and right lower extremity. Respondents assert that while Claimant’s Form AR-C suggests that Claimant also sustained injuries to her left lower extremity and back/spine, there were no objective medical findings in connection with those body parts to support compensability. Furthermore, to the extent there were any purported objective abnormalities contained in the medical records pertaining to the lower left extremity or Claimant’s back/spine, those were pre-existing in nature and/or not otherwise causally connected to the work incident.

It is well-settled that under Arkansas workers’ compensation law that an employer takes the employee as he finds him, and employment circumstances that aggravate preexisting conditions are compensable. Hickman v. Kellogg, Brown & Root, 372 Ark. 501, 277 S.W.3d 591 (2008). 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 workers' compensation is sought. Id. An aggravation is a new injury resulting from an independent incident, and being a new injury with an independent cause, it must meet the definition of a compensable injury in order to establish compensability for the aggravation. Id. at 511-12, 277 S.W. 3d at 600.

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

(i) An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, 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)(A)(i).

Claimant must prove by a preponderance of the evidence that he sustained a compensable injury. 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).

A review of the evidence demonstrates that Claimant failed to prove by a preponderance of the evidence that she also sustained compensable injuries to her back/spine and legs during and in the course of her employment with Respondent-Employer on October 30, 2018.

Testimony showed that at the end of the day on October 30, 2018, Claimant was preparing the ingredients for the breakfast she would cook upon arrival at the Filling Station the next day. As she approached the freezer shelf where the hash browns were located, she slipped and fell on some ice on the floor.

That day, Claimant left work early. She also made a report of the injury and sought medical treatment at Dumas Hospital for her right hand and right lower leg. Medical records showed that x-rays performed on her right arm, hand, and leg on the date of the injury showed no fractures or dislocations or other signs of acute injury, and as a result, she was diagnosed only with right wrist sprain and contusions to her right shin, which Respondents accepted as compensable and paid benefits. According to the medical records from the emergency room, Claimant was released from the hospital the same day and instructed to rest, ice, and elevate the areas and instructed to take over-the-counter pain medication. She returned to work at full duty the next day.

Claimant agreed on cross-examination that at that time, she was having issues only with her right arm and hand and her right lower leg (shin area), where bruising or abrasions were visible. She further testified that she was not having any problems with her left side or left leg during that time.

Testimony showed that on Saturday of that week (November 3, 2018), Claimant woke with complaints of left leg tingling and numbness and sought medical treatment at the emergency room. Medical records from November 3, 2018, showed that Claimant was diagnosed with left foot drop, which warranted further studies. However, Claimant's nerve conduction studies on December 28, 2018, yielded normal results, and Dr. Davis noted only mild neuropathy.

As it relates to Claimant's left leg, Claimant admitted to having similar symptoms in her left leg, including burning and discomfort, prior to her fall at work on October 30, 2018. Claimant also testified that she had received medical treatment for her left leg symptoms prior to her fall at work. Claimant agreed with Respondents' Counsel that she had reported to hospital staff that she had a history of symptoms of left foot drop. Claimant also agreed that during her deposition, she had testified that she did not believe that her left leg symptoms were related to her fall at work.

Furthermore, when questioned regarding her deposition testimony, Claimant agreed with Respondents' Counsel that she had previously stated that she did not have any medical opinion connecting her symptoms on that Saturday morning to her fall at work.

With regard to Claimant's low back, the November 3, 2018, MRI of Claimant's lumbar spine was negative with only slight foraminal narrowing along L5-S1. At the hearing, Claimant agreed with Respondents' Counsel that her physicians had not identified an objective abnormality with regard to her back. A review of the medical records showed that there were, in fact, no objective findings in the medical record to support a back injury. Moreover, there is nothing in the medical records to support Claimant's testimony that her doctor had made the connection between her fall at work and an alleged back injury.

With regard to Claimant's testimony that she also began having symptoms in her right leg, other than the compensable knot/contusion/abrasion on her right shin, she did not provide details of the symptoms in her right leg. There was nothing in the medical records to support any additional injury to her right leg.

Based on the testimony, Claimant returned to work full time on the Wednesday, Thursday, and Friday after her October 30, 2018, fall at work. After she sought medical treatment on the following Saturday (November 3, 2018), she stated that she was off work until November 13th. However, Claimant had continued to work for Respondent-Employer for the past two (2) years. While Claimant believed that she had submitted work restrictions to Respondent-Employer, she admitted that she had continued to work for the past two (2) years at full-duty capacity without any restrictions. A review of the medical records showed that there were no medical records containing any work restrictions documented by a physician.

I find Claimant's testimony that she had health insurance at the time of the hearing, and that it had been active for the last year, noteworthy. Claimant agreed with Respondents' Counsel that she had not attempted to use her health insurance to seek medical treatment. A review of the medical records showed that Claimant did not seek medical treatment for her symptoms after December 28, 2018.

In sum, I find that Claimant failed to meet her burden of proof that she also suffered injuries to her back and legs as a result of her fall at work on October 30, 2018. Specifically, there are no objective medical findings establishing an injury to her low back resulting from her fall at work. As noted above, Claimant's MRI of her lumbar spine was negative with only slight foraminal narrowing along L5-S1. Even if Claimant was able to establish a back injury by objective medical findings, there is insufficient evidence to support a causal relationship between this alleged injury and her October 30, 2018, fall at work.

Furthermore, the preponderance of the evidence before me demonstrates that while Claimant was experiencing symptoms of left foot drop after her fall at work, she had a history of left foot drop for which she testified she had received treatment prior to her fall at work on October 30, 2018. Testimony showed that when she was experiencing symptoms of left foot drop on November 3, 2018, Claimant, herself, believed that those symptoms were not related to her fall at work. Moreover, there is no indication in the medical records that Claimant's left foot drop was in any way related to her fall at work. For these reasons, I find that for me to conclude definitively that Claimant's symptoms of left foot drop were causally connected to her fall at work would call for conjecture and speculation, which, even if plausible, cannot take the place of proof. Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979).

Because Claimant failed to prove she also sustained a compensable injury to her back and legs on October 30, 2018, all other issues of medical and indemnity benefits have been rendered moot and are not discussed in this Opinion. Accordingly, this claim for injuries to Claimant’s back and legs is respectfully denied and dismissed in its entirety.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On the basis of the record as a whole, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704.

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. I accept the aforementioned proposed stipulations as fact.
3. Claimant failed to prove by a preponderance of the credible evidence that she also sustained compensable injuries to her back and legs when she fell at work on October 13, 2018.

ORDER

Claimant has failed to prove by a preponderance of the credible evidence that she also sustained compensable injuries to her back and both legs on October 30, 2018, when she slipped and fell on ice in a freezer while at work. Therefore, this claim for injuries to Claimant’s back and legs is hereby respectfully denied and dismissed in its entirety.

IT IS SO ORDERED.

**KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE**