

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H109525

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| DONNA HILL, Employee | CLAIMANT |
| WEICHERT GROUP REALTY, Employer | RESPONDENT |
| CINCINNATI INSURANCE COMPANY, Carrier | RESPONDENT |

OPINION FILED JUNE 8, 2022

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by CONRAD T. ODOM, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by KAREN H. MCKINNEY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 15, 2022, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on January 19, 2022, and a Pre-hearing Order was filed on January 19, 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. On March 26, 2022, the relationship of employee-employer-carrier existed between the parties.
3. The claimant was earning sufficient wages to entitle her to compensation at the rates of \$425.00 for temporary total disability benefits and \$319.00 for permanent partial disability benefits.
4. The respondents have controverted this claim in its entirety.

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

1. Whether claimant sustained a compensable lumbar spine injury on March 26, 2020.
2. Whether claimant is entitled to medical treatment.

Claimant's contentions are:

“Donna Hill was employed by the Weichert Group Realty on March 26, 2020. On that date, and while in the scope and course of her employment with respondent, she was transporting rent checks from one satellite office to the main office when she was involved in a motor vehicle accident. She sustained a lower lumbar injury in that accident and received medical treatment. She did not miss any time from work nor has any lost wages at this time. That the claimant is entitled to an attorney fee on all benefits awarded.”

Respondents' contentions are:

“Respondents contend that the claimant was not performing employment services at the time of her automobile accident. Alternatively, if the claimant was performing employment services, respondents contend that the claimant cannot prove by a preponderance of the evidence that she sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Act.”

The claimant in this matter is a 52-year-old female who is employed by the respondents as an apartment complex manager. The claimant alleges that she sustained a compensable lumbar spine injury on March 26, 2020, when she was involved in a motor vehicle accident. At the hearing in this matter the claimant gave direct examination testimony regarding her employment duties for the respondent as an apartment complex manager as follows:

Q And if you could, just briefly describe for us what an apartment complex manager does.

A Well, I take in the applications, then the office runs – unless we have something that's available – I take in phone calls and applications; I run the applications for background checks; I reach out to the employers to verify their employment; I verify their rental history, as well, to see where they've been and make sure that I get a copy of that, as well, to put in our file. I do take all this information, once it's collected, to the main office. They have to put it in their records down there. I can't put it in the system where I work. I also collect rent checks and take them to the main office. I do a lot of extra work for the company. During the holidays, different periods of time, I have to collect letters and pass them out and put them on each tenant's doors. I also take calls from the tenants. If they have a problem with something, I have to schedule our techs to come in to look at it or go take care of it myself.

The claimant also testified that the job description found at Claimant's Exhibit 2 was an accurate description of her job duties.

The claimant testified that she managed apartments controlled by the respondent called The Orchard Apartments/Townhomes whose main office is located at 5100 South Thompson Street in Springdale, Arkansas. Claimant managed The Orchard Apartments/Townhomes located on Orchard Street in Springdale, Arkansas. The claimant was questioned on direct examination about her work duties on March 26, 2020, and the incident she alleges to have caused her to have a compensable lumbar spine injury as follows:

Q And then from time to time you will take applications and rent checks to the main office?

A Yes.

Q Were you employed by them on March the 26th of 2020?

A Yes.

Q And on that date, you were involved in a –

MS. MCKINNEY Your Honor, I object to the leading when we're getting into the subject matter of the injury and accident.

JUDGE WELLS I'll sustain it.

Q (Mr. Odom continuing.) Let's talk just a little bit about March the 26th of 2020. Did you go into work that day?

A Yes.

Q And when you went into work, describe what you did.

A When I first get there, I check the mailbox, take in all the checks, and I have a rent roll list. I check off all the tenants that have paid their rent; if they have, then I stamp the checks, and then I have to carry them up to the main office.

Q Did you take them to the main office that day?

A Yes, I was en route.

Q And what happened?

A I got hit by a car.

Q Tell us just a little bit – just briefly how the accident occurred.

A When the light turned green, I took off to get through the stoplight. I had a kid come from the north to southbound and hit me in the front passenger side and knocked me over into the turning lane, come all the way back around and then slammed into the front of me, as well.

Q And you had left the Orchard Apartment Townhomes at that time?

A Yes.

Q And you were headed to where?

A To 5100 South Thompson Street.

Q To do what?

A To turn in my rent checks.

Q And was your car drivable?

A No.

Q How much damage was done to your vehicle, approximately?

A It was totaled so – the offer on that was only 3,800 so...

Q But you weren't able to operate it after that?

A No.

Q And where did you go from the accident scene?

A I had my daughter pick me up and take me to the Springdale hospital.

Q And is that Northwest Medical Center in Springdale?

A I do believe that is what they call it now; yes.

The claimant was seen at the Northwest Medical Center Emergency Room in Springdale on March 26, 2020. Following is a portion of the 72 pages of medical records admitted into evidence from that emergency room visit:

History of Present Illness

50-year-old female presents emergency department chief complaint of right lumbosacral back pain. Patient was in a motor vehicle collision immediately prior to arrival. She was restrained driver in a vehicle that was hit in the front passenger side quarter panel. Damage was moderate,

airbags did not deploy. Patient self extricated. She was ambulatory on the scene. After the accident she states that she began to feel some right lumbosacral back pain. It radiates towards her right gluteal area. She states it was worsened by walking, and palpation of her right lumbosacral back. She denies abdominal pain, chest pain. She did not hit her head. She denies headache nausea or vomiting. Denies saddle numbness, anesthesia or paresthesias to the lower legs. She denies other changes in her health.

Medical Decision Making

Differential Diagnosis: Back pain, lumbar strain.

Differential Diagnosis:

Rationale: Patient's pain is located over the right lumbosacral paraspinous. She has no other abnormalities on physical exam and no signs of trauma to the chest head abdomen or pelvis. Will discharge home.

Radiology results: Reason for Exam

Back pain

The following is a portion of the radiology report from x-rays taken March 26, 2020, during claimant's visit to the Northwest Medical Center Emergency Room:

PROCEDURE: Three-view lumbar spine

INDICATION: Back pain.

FINDINGS: There are 5 nonrib-bearing lumbar vertebra. Vertebral body heights are maintained. Intervertebral disc space heights are preserved. There are no fractures.

IMPRESSION: Normal study.

On March 30, 2020, the claimant was seen at West Washington County Clinic by APRN Tera Thompson. Following is a portion of that medical record:

History of Present Illness

MVA: See CC. Patient states that she was in a car accident 4 days ago. She states that her lower back is hurting. She states that she was hit on the passenger side by a person that ran a red light. She state the other car then did a 180 and slammed into the front of her vehicle. Today she did not take her diclofenac or orphenadrine to see how she felt. She is quite sore still and cannot lift heavy things. Today she has some mild tingling in her her right buttocks. She has pain with bending over and twisting in her lower back. She states that with no movement her pain is 3/10. With movement her pain is 5-8/10. She is using muscle creams, ice, and heat as well.

Telemedicine HPI:

Assessment

Assessed

1. MVA (motor vehicle accident), initial encounter (E819.9) (V89.2XXA)
2. Lumbar strain, initial encounter (847.2) (S39.012A)
3. Acute bilateral low back pain with bilateral sciatica (724.2, 724.3) (M54.42, M54.41)

Plan

For the back pain I am ordering LSO/TLSO back brace to support weak spinal muscles, restrict mobility and decrease pain.
I will also get her set up with a TENs unit as well.
I discussed at this time I would like to not peruse PT unless necessary due to the Corona-Virus.
I discussed to not take NSAIDs while taking diclofenac.
Continue heat and ice and creams as needed.
Home PT exercises discussed.
I will follow up with her in 2-3 weeks to see how she is doing.

The claimant was also prescribed medications found at Claimant's Exhibit 1, Pages 82 and 83 for her complaints of pain.

On April 22, 2020, the claimant was again seen by APRN Thompson. Following is a portion of that medical record, however it should be noted that the claimant appears through testimony and medical records submitted into evidence that she was seen via telemedicine due to the COVID restrictions at that time:

History of Present Illness

4/22/20: Today we are re-checking her MVA. She states today her back is still hurting. She states that she is waking up in the night with pain at times. She is trying not to take her muscle relaxor if possible. Most days she does still have to take the diclofenac though. She does not having any shooting pain down her legs.

Assessment

Assessed

1. Acute bilateral low back pain with bilateral sciatica (724.2, 724.3) M54.42, M54.41)
2. Motor vehicle accident, injury, subsequent encounter (V89.2XXD)
3. Lumbar strain, subsequent encounter (V58.89, 847.2) (S39.012D)

Plan

Again due to COVID we will have to wait to start PT/chiropractic and get further scans done of her back.

Now that this has been a month and she is still hurting I do feel it will be necessary for her to get an MRI of her lower back. Will continue diclofenac and muscle relaxers as needed.

I will follow up with her in 3 weeks to see how she is doing and see if we can get testing/referrals started at that point.

Discussed PT that she can do at home currently.

It should also be noted that the claimant went through a period of conservative treatment at Rise Physical Therapy beginning June 25, 2020. These records are found at Claimant's Exhibit 1, Pages 100-137.

On July 13, 2020, the claimant underwent an MRI of the lumbar spine without contrast at Cerner Imaging. That diagnostic test was read and reported on by Dr. Kremer Nicholas. Following is a portion of that diagnostic report:

FINDINGS:

The conus medullaris is normal. No vertebral compression fracture.

No disc herniations, central canal stenosis, foraminal stenosis, no nerve root impingement.

The retroperitoneum and paraspinal soft tissues are unremarkable.

IMPRESSION:

1. NORMAL MRI OF THE LUMBAR SPINE

A day after that diagnostic test and report, APRN Thompson made the following medical note regarding the claimant:

Well, this is great news, her MRI of her Lumbar spine is completely normal. I suspect that her pain is mostly due to her muscles. Continue muscle relaxors, anti-inflammatories, and Physical Therapy until completed. Follow up as needed.

The claimant was questioned in cross-examination about her complaints of lower back difficulties and treatment as follows:

Q And your report while at the emergency room was right-sided lower back pain; isn't that correct?

A Yes.

Q So it was on the right side?

A Yes

Q And the medical records, I believe you told me in your deposition, that it did go down into your buttocks just a little bit on the right side?

A Yes.

Q Was it muscular type in the buttocks area?

A Yes.

Q Now, you did not have any muscle spasms from this motor vehicle accident; did you?

A Not that I'm aware of; no.

Q And, in fact, you told me in your deposition that you know what muscle spasms feel like because you've actually suffered from them from another incident?

A Yes.

Q And you didn't have anything like that related to this car wreck; did you?

A No.

Q And as you said on direct examination, all of our appointments with your PCP over the phone were face time; isn't that correct?

A Yes.

Q So you never went into the office to see your PCP regarding the treatment from this injury; correct?

A They were shut down at the time because of COVID; yes.

Q Correct. And you saw her and talked to her over the phone; correct?

A Yes.

Q So she never put hands on you in examining you regarding this accident; isn't that correct?

A That's correct.

Q Initially, the records from Tera indicate that she recommends home physical therapy because of COVID; isn't that correct?

A I don't recall that.

Q You saw her within a couple of days after this accident. You spoke to her on the phone?

A Yes.

The claimant was also questioned on cross-examination about a prior injury that she had to her back in a motor vehicle accident in the mid to late 1990s as follows:

Q I want to talk to you a little bit about the prior medical history. You told me in your deposition that you had a pretty serious motor vehicle accident back in the mid to late '90s. Isn't that correct?

A Ninety-five to ninety-seven; somewhere in there, yes.

Q And as a result of that, you said you had a dislocated tailbone. Is that what you called it?

A Yes. It was pulled out – a joint was pulled out in the accident. It never was put back in. There was no way to actually do it and it stay so...

Q So to this day, that's still how your tailbone is; right?

A Exactly.

Q It's not normally aligned. It's pulled out?

A Yes.

Q And as a result of what happened back in the late '90s, you were diagnosed with a leg length discrepancy; correct?

A Yes.

Q And I think the medical records call that LLD, leg leg discrepancy. And they actually gave you shoes to wear.

A No, just a shoe lift to put in my shoes.

Q A shoe lift. But you've stopped doing that?

A I haven't done it since a couple of months after they gave it to me.

Q Because that caused you problems?

A Yes.

Q You told me that you still have that leg length discrepancy to this day; correct?

A As far as I know; yes.

Q So if the medical records show a leg discrepancy, that doesn't surprise you; does it?

A No.

Q And this injury – this accident on March the 27th was not to your tailbone, it was; it was to your lower back; correct?

A March 26th and –

Q March 26th.

A - - yes.

Q And it was more to the right side; correct?

A Yes.

Q It wasn't to the left side?

A Correct.

The respondent in this matter alleges that the claimant was not performing employment services at the time of her motor vehicle accident in part due to time discrepancies between the motor vehicle accident report done by law enforcement, her testimony about when the accident occurred, the medical report timeframe from her emergency room records and the work-duty documents specifying the time to bring rent checks to the main office. However, even if I found the claimant to have been performing employment services for the respondents at the time of the motor vehicle accident, which I believe the weight of credible evidence supports, I still could not find her alleged low back injury compensable due to the lack of objective medical evidence.

The claimant's MRI is normal. The claimant's lumbar x-rays taken the day of the alleged incident are negative. There appears to be no objective evidence of this injury. The claimant even testified that she

had muscle spasms in the past and did not associate any muscle spasms with this incident. The claimant testified to pain in her lower back, and I believe she is credible in that testimony, but she simply lacks the objective medical findings required under the Arkansas Workers' Compensation Act to prove her claim of a compensable lower back injury. As such, I find the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable low back injury on March 26, 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 January 19, 2022, and contained in a Pre-hearing Order filed January 19, 2022, are hereby accepted as fact.
2. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable lumbar spine injury on March 26, 2020.
3. The claimant has failed to prove by a preponderance of the evidence that she is entitled to medical treatment for her alleged compensable injury.

ORDER

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

IT IS SO ORDERED.

**ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**