

DIVISION II

CA07-461

December 19, 2007

CATHIE M. SHELLEY

APPELLANT

APPEAL FROM THE WORKERS'  
COMPENSATION COMMISSION  
[NO. F513396]

V.

VAN BUREN SCHOOL DISTRICT and  
RISK MANAGEMENT

APPELLEES

AFFIRMED

Appellant Cathie Shelley argues on appeal that the Arkansas Workers' Compensation Commission erred in its conclusion that she did not sustain compensable injuries to her left hip and back on November 9, 2005. We affirm the Commission's decision.

At the hearing, Shelley testified that, while working as a janitor for the Van Buren School District, she pulled a heavy garbage bag of magazines from a garbage can in the library of the school and then dragged the bag downstairs. She testified that her pain started when she was attempting to get the garbage bag out of the can and, by the time she got the bag downstairs, she was hurting so badly that she "couldn't hardly walk." She describes her pain as starting in the left "groin area," like a "severe catch." She stated that the pain then went into her left hip and into her back, and also down her left leg to about her knee. She

described the pain in her groin as being “real severe,” especially whenever she tried to move her leg, and the pain into her hip and leg as a “solid ache.”

Shelley further testified that following the onset of these difficulties, she went to the breakroom and took her regular break. While in the breakroom, Shelley allegedly told two co-employees that she was “hurting real bad” and that she thought that she had hurt herself when she had pulled on the garbage bag. She identified these co-employees as Sheila and Leon. Despite the pain, Shelley admitted that she completed the remainder of her shift (approximately six hours) and her entire shift the following day. However, she testified that on the third day her pain was so bad that she did not go into work but rather consulted her family doctor, Dr. Paul E. Bean. She further stated that she was not sure why she failed to report her accident or injury to anyone in a supervisory position or request medical treatment through workers’ compensation at that time. She acknowledged that she did not report any employment-related injury to her employer until the following week.

Although Shelley initially denied any prior difficulties with her left hip, she ultimately conceded that she may have suffered some prior difficulties. However, it was her testimony that if she had had any prior difficulties with her left hip, they were “totally different” from what she experienced after she “hurt” herself. She also conceded that she did not experience any pain or symptoms at the actual time she pulled the heavy trash bag from the barrel. Rather, she described her difficulties as beginning sometime before she could “get downstairs” with the trash.

Shelley also offered the testimony of her co-worker Sheila Pinkerton. Pinkerton testified that she had known Shelley for six years. Pinkerton further testified that she recalled one morning when Shelley complained about the trash being heavy in the library. Pinkerton testified that about that time she noticed Shelley “hurting more than other times.” She further testified that later that day Shelley made the statement to her: “I kind of wonder if I might have hurt myself.” However, Pinkerton also conceded that over the course of their relationship Shelley made numerous complaints about her back and various other portions of her body, which Shelley attributed to her arthritis.

Shelley’s husband testified that when he picked Shelley up from work on November 9, she was complaining of pain and had difficulty walking. He stated that these problems had not been present when he had dropped her off at work that morning. He further testified that she was “moving different” and that the area of her pain was different from her usual and customary pain areas. However, he did acknowledge that his wife has had a long and extensive history of back and hip trouble.

Based on this testimony, which was the only evidence causally linking Shelley’s hip fracture to a work-place event, the ALJ determined that Shelley had failed to prove by a preponderance of the credible evidence that she sustained a compensable injury arising out of and during the scope of her employment. The opinion of the ALJ was affirmed and adopted by the full Commission. It is from the Commission’s ultimate resolution of her claim that Shelley appeals.

When the Workers' Compensation Commission denies coverage because the claimant fails to meet her burden of proof, the substantial-evidence standard requires that we affirm the Commission's decision if its opinion displays a substantial basis for denial of relief. *McMillian v. U.S. Motors*, 59 Ark. App. 85, 953 S.W.2d 907 (1997). The burden rests on Shelley to prove each of the elements necessary to establish these alleged work related injuries as "compensable injuries" under the terms of the Arkansas Workers' Compensation Act. *See* Ark. Code Ann. § 11-9-102 (4)(A) (Repl. 1996).

First, Shelley was required to prove by medical evidence, which is supported by objective findings, the actual existence of the physical injuries or conditions alleged to be compensable. She easily clears this first hurdle. The medical evidence presented showed that Shelley had extensive degenerative or osteoarthritic changes involving the L-4, L-5, and S-1 vertebra, as well as the L4-5 and L5-S1 intervertebral discs. Further, the existence of these extensive degenerative or osteoarthritic changes was supported by purely objective findings—as noted on a CT scan of the lumbar spine that was performed on November 21, 2005. The medical evidence also showed that Shelley had significant physical defects involving her left and right hip. The existence of these physical defects were objectively noted on x-ray films. Finally, Shelley presented medical evidence showing that she suffered a fracture to the left iliac wing of her pelvis. The existence of this fracture was also supported by objective findings noted in radiographic studies, including both plain x-rays and a CT scan.

The fact that Shelley established an injury does not necessarily mean that it is a “compensable injury” as defined by our Workers’ Compensation Act. She claims on appeal that she met that burden by showing that her injuries were the result of a specific incident that occurred on or about November 9, 2005. However, a cursory look at Shelley’s burdens under Ark. Code Ann. §11-9-102(4)(A)(i) demonstrates why she cannot clear this hurdle.

She was required to prove:

- (1) That the physical injury or condition arose out of and occurred in the course of the employment;
- (2) That the physical injury or condition was caused by a specific incident;
- (3) That the physical injury or condition is identifiable by time and place of occurrence;
- (4) That the physical injury or condition caused internal or external physical harm to the claimant’s body;
- (5) That the physical injury or condition required medical services or resulted in disability.

Therefore, Shelley was required to establish the existence of a causal relationship between her physical injuries and a specific employment-related incident or accident on November 9, 2005. Here, Shelley’s own testimony is the only direct evidence she has presented to prove the existence of a causal relationship between a specific employment-related incident or accident, on November 9, 2005, and her subsequent difficulties with her low back and left hip.

The initial medical report of Dr. Paul Bean, dated November 11, 2005, indicated that Shelley’s primary complaints involved pain in her left hip that radiates down into her thigh. He did mention some complaints of pain in the lower back but indicated that these complaints were less severe. Although he noted that Shelley reported that she had lifted some

heavy trash bags “yesterday” (November 10), he did not record any history of a close temporal relationship between this activity and the initial onset of Shelley’s current symptoms. While he noted that Shelley gave a history of a sudden onset of pain “yesterday” (November 10), he also indicated that Shelley did not “remember any specific trauma” occurring at that same time.

Further, a CT scan of Shelley’s lumbar spine was performed on November 21, 2005. This test was interpreted as revealing only extensive degenerative arthritic changes from L4 through L5, and the possibility or “suggestion” of a disc protrusion, but no definitive showing of recent or acute injury.

The first record of a history of a close temporal relationship between an employment-related lifting and the onset of Shelley’s symptoms does not appear until the report of Dr. Keith Holder on December 6, 2005. In his note of December 6, 2005, Dr. Holder stated:

This is the initial narrative summary on Ms. Shelley, an employee of Butterfield Junior High in Van Burn, who reports she was lifting a bag of trash in normal duties as custodian. She had actually taken weight out of the trash can in the bag before she lifted it, but she felt pain in the left groin at that time that has continued to increase since the initial date of injury on 11-9-05. She reports this happened at approximately 6:00 a.m. in the morning.

Dr. Holder was the first to diagnosis Shelley’s pelvic fracture. This diagnosis was based on x-rays performed at Dr. Holder’s request on December 6, 2005. However, the x-rays alone were not sufficient to determine the age of the fracture. A CT scan of the pelvis was recommended for this purpose and was performed on December 8, 2005. This test indicated that the fracture was of recent origin and that it was likely not pathologic. The

radiologist's interpretation of the CT scan indicated that for a "simple fracture" of this type to occur, there must have been "significant trauma to this region."

Subsequent studies performed by Dr. James Deneke, a rheumatologist, all showed no evidence that Shelley suffered from osteoporosis, or increased risk for fracture. However, as noted by the ALJ:

Dr. Deneke does make a rather curious and apparent inconsistent statement: "If indeed, the patient had a pelvic fracture with minimal trauma, then she does have osteoporosis." Such a diagnosis of osteoporosis would appear to be clearly contrary to all of his prior conclusions and stated test results. There is clearly no objective findings to support the existence of osteoporosis, involving the claimant's pelvis or to indicate that this fracture was due to any inherent weakness of this portion of her body.

Based on this medical evidence, Shelley's failure to report the "incident," and her decision to continue working after the "accident," the Commission adopted the ALJ's finding that Shelley failed to prove the causal link between her injury and the workplace. It concluded, based on the testimony and medical evidence, that her current difficulties were primarily, if not solely, the result of a fracture to the left wing of her pelvis—which could not "reasonably or logically" have been produced by the lifting incident described by Shelley during her testimony. The Commission also ruled out any argument that Shelley's injury was caused by an aggravation of a pre-existing condition when it noted that the medical evidence failed to support the existence of any pre-existing weakening of Shelley's pelvis due to tumor, osteoporosis, or any other pre-existing condition. In reaching this conclusion, the ALJ—and ultimately the Commission—relied heavily on a note by Dr. David Diment, the

radiologist, stated his opinion that “significant trauma” directly to the pelvic region would be required to produce this fracture.

In conclusion, there is substantial evidence to support the Commission’s conclusion that “lifting and pulling on a trash bag of magazines, regardless of the weight, would not reasonably or logically result in any direct trauma to or significant stress on [Shelley’s] left iliac crest of her pelvis.” Even Dr. Bean, Shelley’s family physician, conceded that “there is no obvious source for why she had her fracture.” The Commission’s decision, therefore displays a substantial basis for the denial of the claim, and we affirm.

Affirmed.

MARSHALL and MILLER, JJ., agree.