

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F200237

PATSY GAIL SPRINKLE, EMPLOYEE	CLAIMANT
NETTLETON HIGH SCHOOL, EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED SEPTEMBER 11, 2003

Hearing before Chief Administrative Law Judge David Greenbaum on July 25, 2003, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Brian Blackman, Attorney-at-Law, Jonesboro, Arkansas.

Respondents represented by Mr. Richard A. Lusby, Attorney-at-Law, Jonesboro, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on July 25, 2003, to determine whether the claimant sustained a compensable injury or injuries within the meaning of the Arkansas Workers' Compensation Laws.

A prehearing conference was conducted in this claim on May 28, 2003, and a Prehearing Order was filed on said date. A copy of the Prehearing Order was marked "Commission's Exhibit 1" and made a part of the record without objection.

It was stipulated that the employment relationship existed at all relevant times, including January 25, 2001; that on that date, claimant's wages were sufficient to entitle her to a compensation rate of \$251.00 per week for

temporary total disability; and that the claim had been controverted in its entirety. It was further stipulated that, in the event the claim was found compensable, the total amount of temporary total disability due, apart from any offsets or credits, would be \$5,373.00, the parties agreeing that the claimant received \$2,256.00 in sick pay which is funded by other teacher contributions, as well as an additional \$1,143.00 in sick pay provided by the respondent/employer, for a total amount of sick pay received through the school of \$3,399.12. In addition, it was stipulated that the claimant received \$6,116.23 from disability policies in which the claimant paid the premiums entirely without school contributions.

At the hearing, the parties announced that the issues, as well as their respective contentions were properly set out in the Prehearing Order.

By agreement of the parties, the primary issues presented for determination concerned compensability of both a physical injury, as well as a mental injury. If overcome, claimant's entitlement to associated benefits must be determined.

Claimant contended, in summary, that she sustained a compensable physical injury, specifically, an aggravation of a pre-existing fibromyalgia as the result of breaking up a fight at Nettleton Junior High School on or about January 25, 2001; that, in addition to the physical injury, she sustained a mental injury as a consequence of the physical injury; or, alternatively, that her

mental injury was the result of a violent crime; that she was entitled to temporary total disability for the physical injury beginning January 26, 2001, and continuing through October 14, 2001, at which time she returned to work for a different employer; that, in addition, she was entitled to twenty-six (26) weeks of disability for the mental injury; that respondent should be held responsible for all medical and related treatment, together with continued reasonably, necessary medical treatment; and that a controverted attorney's fee should attach to any benefits awarded.

The respondents contended that claimant did not sustain an injury arising out of and during the course of her employment on January 25, 2001, specifically, respondents maintained that the alleged injury was not compensable because it did not satisfy the requirements of A.C.A. §11-9-102(4)(D) because of a lack of objective medical evidence. Concerning the alleged mental injury, respondents contended that claimant could not meet the requirements of A.C.A. §11-9-113(a)(1) and (2). Alternatively, respondents contended that claimant could not prove entitlement to temporary total disability and that the medical care for which the claimant sought compensation was not reasonably necessary nor related to the alleged accident. Respondents further maintained that claimant's physical problems, if any, were a recurrence of her fibromyalgia rather than an aggravation of a pre-existing condition. In the event compensability was overcome, respondents contended it was entitled

to a credit or offset for any days that the claimant actually worked, together with an offset for any disability or medical received from other carriers.

As reflected by the stipulations, aforementioned, the parties agreed to the amount of claimant's entitlement to temporary total disability in the event compensability was determined.

The claimant testified in her own behalf. Dr. W. Gerald Fowler was called as a hostile witness by the respondents and testified live at the hearing. The record is composed solely of the transcript of the July 25, 2003, hearing containing volumes of exhibits.

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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties at the July 25, 2003, hearing are hereby accepted as fact.
3. The claimant has failed to prove, by a preponderance of the credible evidence, that she sustained a physical injury, supported by objective

medical evidence, which arose out of and during the course of her employment at Nettleton Junior High School as the result of a specific incident while breaking up a fight on January 25, 2001.

4. The claimant has failed to prove, by a preponderance of the credible evidence, that she sustained a mental injury which arose out of and during the course of her employment with the respondent.
5. The claimant has failed to prove, by a preponderance of the credible evidence, that her psychological problems, and need for medical treatment were the result of the alleged physical injury of January 25, 2001.
6. The claimant has failed to prove, by a preponderance of the credible evidence, that her psychological problems, and need for medical treatment were the result of being victim of a crime of violence alleged to have occurred as the result of breaking up a fight at Nettleton Junior High School on January 25, 2001.
7. The claimant has failed to prove, by a preponderance of the evidence, that she is entitled to workers' compensation benefits.
8. Respondents have controverted this claim in its entirety.

DISCUSSION

_____The claimant, Patsy Gail Sprinkle, testified in her own behalf. The claimant worked for Nettleton Junior High, hereinafter referred to as

“respondent,” for approximately ten (10) years, specifically, beginning September, 1991, through October, 2001. She was employed as a paraprofessional which is a trained instructional assistant for teachers. Her job included testing students, working in classrooms with students, one-on-one, filling out student folders and making evaluations, as well as working as a substitute teacher. Occasionally, the claimant was required to prevent fighting among students. Although the claimant testified that most of the time she was able to stop a fight before it began, she stated there were occasions when she was required to physically breakup a fight between students. She described an incident which occurred on January 25, 2001, when she broke up a fight between two female students, Alicia Cunningham and Jamie Unger. A description of the incident is set out below:

Q Okay. And you said you broke up a fight between Alicia Cunningham and Jamie Unger. How did that come about and how did you become to be involved?

A Well, actually, a few days earlier Alicia Cunningham had come to me wanting not to fight this girl, wanting not to get herself in trouble. So I took her to the office hoping that maybe the kids could settle this between themselves in the office, you know, without having a fight. But a few days later, on the 25th, Kristin Lapira came down the hallway and told me that Jamie Unger needed a bodyguard. I said, “What’s up?” and she said that Alicia Cunningham was down there arguing with Jamie Unger and fixing to fight her.

Q And did you go down there?

A I hollered for Alicia, and I didn’t see her head pop up out of

the crowd, so I hurried down to the horseshoe crowd that was around them. They were up against a block wall on the concrete floor with tile, and when I broke through the crowd, I saw that Alicia had Jamie down on the floor, and I couldn't actually tell if she was pounding her head on the floor or if she was just beating her with her fist, but I knew in my mind that if I didn't get her off of there, that she would be killed or seriously hurt.

Q And did you get her off of there?

A Yes. What I did is I just put my head down like a football tackle and tackled her off of her, and I landed on the floor on my left side. That was the direction I was going in. I got her in a headlock and swung around behind her, I got her arm pulled back, and I asked her, I said "Alicia," I said, "what's the matter with you? You're twice her size. Are you trying to kill her?" And she said, "Yes." Then I just kind of, you know, didn't know what to think from there on out. It was just unreal for me to hear that coming out of a teenager's mouth.

Q And when you came to this situation, how did your body react when you first got there and you saw this going on?

A Ok, it was an adrenaline rush, you know, goes through you and what's the proper thing to do, you know, to make the best of the situation, and that's what I came to the conclusion, was to tackle her off, and, of course, my adrenaline was just out the roof.

Q Okay.

A You know.

Q What did you do? You said that you had taken Alicia and you asked her this question, she gave you a response, what did you do after that?

A You know, I just – in my mind I didn't understand it, you know, why this could happen, why that both of these children have friends in this crowd of people and they would not stop this fight, seeing how violent that it was, and I have to say that my mind flashes back on some of the teachers and some of the things

that I've heard them say in the past, and that they reminded myself –

MR. LUSBY: Objection, relevance, Your Honor.

THE CLAIMANT: I didn't –

MR. BLACKMAN: Well, we'll move on, Your Honor.

JUDGE GREENBAUM: She can say what flashed in her mind as long as she doesn't say what any of these teachers might have said. Go ahead.

THE CLAIMANT: Those were thoughts that went through my head, was their conversations and our children being able to hear those conversations, and why that – that's the way they were.

BY MR. BLACKMAN:

Q Okay. Did you have any interaction with any administration of the school after this incident occurred that day?

A Well, I took Alicia down to the office. Jamie had already made it down and I left her with whoever was in the office at that time. Later on that day I remember Coach Tennison walking by me. We were in the office and said, "Nice tackle, Gail." We went on about our business, but they never called me back to question me about the incident or how it was broke up or my condition.

Q Were there any authorities outside of the school authorities that you know of that were there present that day or were called that day?

A There was no one in the hallways except for myself.

Q Outside – I'm speaking outside of the school authorities, as in the administration, was there any outside –

A In the hallways?

Q No, no, were there any authorities – not school personnel or any employees, I'm speaking of anyone not employed by the school called to the scene that day?

A Oh, yes, the police came. The police came and I think they filed charges against Alicia Cunningham. (Tr.13-16)

The record reflects that the claimant has a pre-existing condition, having been diagnosed with fibromyalgia prior to the incident. The claimant testified that she was in pain everyday as the result of the pre-existing fibromyalgia and that she did not really notice any extra pain following the incident. In fact, the claimant was scheduled to return to her treating physician for additional treatment, including injections for the fibromyalgia. The claimant first sought medical treatment on February 6, 2001, when she was seen by Dr. Randy Roberts. The history contained in Dr. Roberts' February 6, 2001, report relates that the claimant was having increased pain in her upper back/shoulders and lower back; that the claimant had been under a great deal of stress with her daughter's return to home and rehab. Dr. Roberts further noted that the claimant called back on February 28, 2001, to report that she believed her increased problems were related to breaking up an altercation between students. However, Dr. Roberts' report contains no objective evidence of injury. (Tr.17)(Resp. Ex. A, p.35)

The claimant stated that she next went to her primary care physician, Dr. Stephen Golden. The claimant first saw Dr. Golden on March 2, 2001. A

portion of Dr. Golden's report is set out below:

S: This 39 year old female presents today under a lot of stress, crying a lot and she feels like she needs time off work. She has been off work for 2 weeks. Dr. Robert [sic] gave the patient these 2 weeks off primarily for fibromyalgia. Today, she is having problems more with stress and adjustment reaction. (Jt. Ex. A, p.1)

Again, neither Dr. Roberts nor Dr. Golden offered any medical evidence supported by objective findings to support a physical injury. Both found the claimant's primary problems, other than the pre-existing fibromyalgia to be related to stress.

The claimant eventually returned to Dr. Golden on May 7, 2001, at which time it was suggested that the claimant see a psychiatrist. May 7, 2001, was also the first date in which Dr. Golden's office was advised that the claimant was relating her problems to her employment. The following note was signed by Vicki Kennedy, an assistant in Dr. Golden's office, on May 7, 2001:

PT CAME IN TODAY TO DISCUSS [sic] WORKMEN COMP. SHE WAS UPSET BECAUSE THERE WAS NOT ANYTHING DOCUMENTED ABOUT THE INCIDENT [sic] AT SCHOOL CAUSING THE PROBLEMS SHE IS HAVING NOW. I TRIED TO EXPLAIN TO HER THAT IT WASN'T DOCUMENTED AT ANY OFFICE VISIT. I READ HER THE LETTER THAT WAS IN THE COMPUTER THAT SAID INCIDENT [sic] AT SCHOOL CAUSED A FLARE-UP OF HER FIBROMYALGIE [sic] SYMPTOMS. I TRIED TO EXPLAIN THAT WE CAN'T CHANGE RECORDS. I TOLD HER I REMEMBER TALKING TO HER ABOUT THIS. SHE SAID IF SHE HAS TO GO TO COURT SHE COULD HAVE ME SUBPOENA. [sic] SHE SAID SHE COULD ALSO HAVE DR GOLDEN SUBPOENA. [sic] SHE TOLD ME BEFORE ALL OF THIS THAT SHE CAN'T FIND A LAWYER TO TAKE HER CASE. SHE GOT VERY UPSET AND

LEFT WHEN I TOLD HER SHE WOULD HAVE TO DO WHAT SHE NEEDED TO DO. (Jt. Ex. A, p.2)

ADJUDICATION

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of A. C. A. §11-9-102(4)(A)(i)(Repl. 2002), must be established:

1. Proof by a preponderance of the evidence of an injury arising out of and in the course of employment;
2. proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
3. medical evidence supported by objective medical findings, as defined in A. C. A. §11-9-102(16), establishing the injury; and,
4. proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, she fails to establish the compensability of the claim, and compensation must be denied. *Mikel vs. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

An aggravation is a new injury resulting from an independent incident. *Farmland Ins. Co. vs. Dubois*, 54 Ark. App. 141, 923 S.W.2d 893 (1996). An

aggravation, being a new injury with an independent cause, must meet the statutory requirements for a compensable injury. *Ford vs. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998).

The fact that an incident occurred on January 25, 2001, is undisputed. The claimant maintains that she sustained a physical injury, specifically, an aggravation of a pre-existing fibromyalgia as the result of breaking up a fight on January 25, 2001. In addition to the alleged physical injury, claimant maintains that she sustained a mental injury as a consequence of the physical injury, or, alternatively, that her mental injury was the result of a violent crime. Conversely, respondents contend that the claimant did not sustain either a physical injury or a mental injury as the result of the January 25, 2001, incident.

Ark. Code Ann. §11-9-102(4)(D)(Repl. 2002) states that a compensable injury must be established by medical evidence supported by “objective findings” as defined in subdivision (16) of this section.

Ark. Code Ann. §11-9-102(16)(A)(i) provides:

“Objective findings” are those findings which cannot come under the voluntary control of the patient.

The claimant has failed to offer any medical evidence supported by objective findings to support a new injury on January 25, 2001. Rather, the claimant’s need for medical treatment for any physical problems was directly

and causally related to the pre-existing fibromyalgia. The claimant stated that she was in pain everyday before January 25, 2001, and her course of treatment for the pre-existing fibromyalgia continued. The only new complaint noted in the medical evidence related to mental stress.

MENTAL INJURY

Except for victims of violent crimes, a mental injury to be compensable must be caused by a work-related, physical injury. Ark. Code Ann. §11-9-113 is set out, in part, below :

(a)(1) A mental injury or illness *is not a compensable injury unless it is caused by physical injury* to the employee's body, and shall not be considered an injury arising out of and in the course of employment or compensable unless it is demonstrated by a preponderance of the evidence; provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence.

(2) No mental injury or illness under this section shall be compensable unless it is also diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders.

(b)(1) Notwithstanding any other provision of this chapter, where a claim is by reason of mental injury or illness, the employee shall be limited to twenty-six (26) weeks of disability benefits. (Emphasis supplied)

Our Courts have consistently held that the aforementioned statute, together with the provisions of A.C.A. §11-9-102(4)(A) set out a requirement that a physical injury precede and cause the mental injury in order for the

mental injury to be compensable. *Travelers Ins. Co. vs. Smith*, 329 Ark. 336, 947 S.W.2d 382 (1997); *Amlease, Inc., vs. Kuligowski*, 59 Ark. App. 261, 957 S.W.2d 715 (1997).

The claimant contended that her mental injury was a direct consequence of the physical injury. Alternatively, claimant maintained that her mental injury was the result of a violent crime. The claimant's contentions are simply not supported by the record as a whole. First, as reflected further below, it is clear from the medical opinion of Dr. W. Gerald Fowler, claimant's treating psychiatrist, that he was unaware of any physical injury. Accordingly, even if his ultimate diagnosis is accepted as satisfying the requirements of A.C.A. §11-9-113(a)(2), the claim fails because the alleged mental injury or illness was not caused by a physical injury. In addition, the claimant has failed to prove, by a preponderance of the evidence, that she was a "victim" of a crime of violence.

The first medical provider that the claimant saw after January 25, 2001, was Dr. Randy Roberts. Dr. Roberts noted that the claimant had been under a great deal of stress, apparently related to the claimant's daughter returning to home following a program of rehabilitation. (Cl. Ex. A, p.35)

The claimant was next examined and evaluated by Dr. Stephen C. Golden, a rheumatologist who had been treating the claimant for some time for her fibromyalgia. Again, Dr. Golden noted that the claimant was having problems with additional stress and diagnosed adjustment disorder. There was

no history of any physical injury contained in Dr. Golden's records. Dr. Golden continued to treat the claimant for her pre-existing fibromyalgia. On May 7, 2001, he indicated that the claimant needed to see a psychiatrist for her adjustment disorder.

The claimant was first examined and evaluated by Dr. W. Gerald Fowler, a psychiatrist in Jonesboro, Arkansas, on August 15, 2001. Dr. Fowler's report contains an extensive history of various events provided to him by the claimant, including her report of breaking up a fight on January 25, 2001. However, the claimant's history failed to reflect any other life stresses such as the problem with her daughter's return to home previously documented. In addition, there was no mention of a subsequent verbal exchange between the claimant and a school administrator, Clarence Higgins, on February 21, 2001, which will be discussed further below. Dr. Fowler ultimately diagnosed the claimant with post-traumatic stress disorder, obsessive/compulsive disorder, panic disorder, adjustment disorder with mixed anxiety and depression, borderline personality disorder, and fibromyalgia. Dr. Fowler also noted that the claimant had previously consulted a psychiatrist in Blytheville, Dr. Saguerio, who did not prescribe medications beyond the medications previously prescribed by Dr. Golden in February, 2001. Dr. Fowler prescribed additional medications. (Cl. Ex. A, pp.3-6)

In a letter dated September 6, 2002, addressed To Whom It May

Concern, Dr. Fowler opined that the claimant exhibited post-traumatic stress disorder which he related, by history, to an altercation between two students at Nettleton Junior High School on January 25, 2001. (Cl. Ex. A, p.2)

Dr. Fowler was called as a hostile witness by the respondents. Rather than conduct an exhaustive analysis of Dr. Fowler's testimony concerning the cause of claimant's psychological problems, suffice it to say that he was unaware of any alleged physical injury. (Tr.71)

On claimant's cross-examination, respondents pointed out that the claimant did not report an alleged work-related injury until February 26, 2001, more than one month after the injury. It was only after an incident at school involving a heated, verbal exchange on February 21, 2001, at which time the claimant was admonished by school administrators concerning her handling of a senior high student who came on the junior high school campus that the claimant filed a workers' compensation claim. Also, after being admonished, the claimant called Dr. Roberts' office on February 28, 2001, attempting to correct his report which reflected, in part that the office visit on February 6, 2001, included a recent history citing stress related to her daughter's return to home. (Tr.25-30)

In addition, respondents pointed out on both cross-examination of the claimant, as well as its examination of Dr. Fowler that many of the claimant's symptoms for which she received considerable treatment, pre-dated the

January 25, 2001, incident and were associated to her fibromyalgia, including headaches, nausea, dry mouth, dizziness, lightheadedness, depression, and memory loss. (Tr.31-32, 50-53)

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in her favor. *Pearson vs. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer vs. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss vs. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met her burden of proof be weighed impartially, without giving the benefit of the doubt to either party. *Arkansas Code Annotated §11-9-704(c)(4)*; *Wade vs. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler vs. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

There is no credible evidence that the claimant sustained a physical injury as the result of breaking up a fight between two students on January 25, 2001. The claimant has failed to prove, by a preponderance of the evidence, that she was the victim of a crime of violence. After reviewing the evidence in

this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to prove that she sustained either a physical injury or a mental injury within the meaning of the Arkansas Workers' Compensation Laws. Accordingly, the within claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge