

**BEFORE THE ARKANSAS WORKERS' COMPENSATION
COMMISSION**

CLAIM NO. F311785

BRITTANY EVANS, EMPLOYEE	CLAIMANT
CATFISH LANDING, EMPLOYER	RESPONDENT
FIRSTCOMP INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED OCTOBER 20, 2004

Hearing before Administrative Law Judge Cynthia Estes Rogers on July 22, 2004, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Jon Johnson, Attorney at Law, Jacksonville, Arkansas.

Respondents represented by Mr. William C. Frye, Attorney at Law, Little Rock, Arkansas.

A hearing was held on July 22, 2004, to determine the compensability of the claim filed herein.

The parties stipulated to the existence of the employee-employer relationship on October 2, 2003. It was further stipulated that the claimant's earnings were sufficient to entitle her to weekly indemnity benefits of \$38.00 for temporary total disability benefits, based on an average weekly wage of \$50.07.

Claimant contends that she sustained a work-related injury on October 2, 2003. She contends that she is entitled to temporary total disability benefits from the date

of injury until a date yet to be determined, as she is still in a healing period, past and future medical benefits, and attorney's fees.

Respondents controvert the claim in its entirety. In particular, respondents contend that the claimant did not mention an injury to her employer on the alleged date of injury. Respondents contend that there are no objective measurable findings to support claimant's claim. Respondents further contend that claimant has continued to go to school full time and is, therefore, not entitled to any temporary total disability benefits.

STATEMENT OF THE CASE

At the time of the alleged incident, claimant was a full-time college student and mother of a three-year-old child. Claimant had been working as a part-time waitress for respondent employer for about three or four months, prior to the alleged incident. She testified that on the evening of October 2, 2003, as she and another employee, "Deborah," were pushing tables out of the way to clean the restaurant to prepare to close, she felt a pain just above her belt on the left side of her back. She testified that she immediately told Deborah that she had hurt her back and then told the restaurant manager, Ronnie Aultman, the same. Mr. Aultman admitted in his testimony that she told him she had hurt her back pushing a table but that she was "fine." Deborah was not called to testify.

Claimant testified that she went to the emergency room the following day, still having pain in her back. She testified that she called Mr. Aultman to ask him if respondent employer would pay for the medical care. She testified that at first, Mr. Aultman told her “not to worry about it,” but that he would ask the owner; however, after he checked with the owner, Mr. Aultman told her that they would not pay. She testified that since she was an unmarried college student, she had been on her mother’s insurance, but at the time of this incident, her mother had just changed jobs; therefore, claimant had no insurance at the time of the alleged injury. Claimant testified that she continued to seek evaluation and treatment, despite her knowledge that her employer refused to pay. She was given pain medication and muscle relaxers and released from the emergency room, asking to be billed personally. She began treating with her general practitioner three days later, following the weekend.

A series of varying diagnostic tests were run, including an X-ray, an MRI, and a bone scan. The results of each of these tests were negative, showing no abnormalities. The medical records show only subjective complaints of pain and tenderness, but no spasm.

Claimant testified that although she maintained her status as a full-time student, driving twenty-five miles each way to class, she missed three weeks worth of classes immediately following the alleged work-related injury. She continued to care for her son as usual, however, and even took a trip shortly after the alleged injury

to Disney World in Florida, although she testified that she stayed in the hotel room, while her fiancé and others took her son out into the amusement park. She testified on direct examination that she took this trip “about three months after” the injury. However, on cross-examination, she admitted that she had testified in her deposition that the trip was in late October or early November following the alleged injury, which would have only been a few weeks after.

Claimant further testified that she had filed a claim against Tyson Foods in September 2003 for chipping a tooth while biting into a chicken nugget that contained a bone at McDonald’s. She admitted that when asked in her deposition if she had had any other personal injury claims, she failed to disclose the claim against Tyson. She testified that she forgot about that claim, which notably had occurred only one month before the injury alleged in this case.

Claimant testified that once her mother’s new insurance went into effect, she was able to go to OrthoArkansas and continues physical therapy there on an as-needed basis, although she was previously released to return to work. She testified that she attempted to call respondent employer to report that she was able to return to work but that the manger never called her back.

FINDING OF FACT

Claimant has failed to meet her burden of proving by a preponderance of the evidence that her alleged injury is compensable. Specifically, the claimant has failed

to establish a causal connection between her employment and her injury, within a reasonable degree of medical certainty.

DISCUSSION

There is a requirement in all workers' compensation cases that the claimant must demonstrate a causal connection between the injuries complained of and the work activity. *See Gerber Products v. McDonald*, 15 Ark. App. 226, 691 S.W.2d 879 (1985). Moreover, a compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D); *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000); *Kildow v. Baldwin Piano*, 333 Ark. 335, 969 S.W.2d 190 (1998). Objective findings are those that cannot come under the voluntary control of the claimant. Ark. Code Ann. § 11-9-102(16)(A)(i). Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16)(B); *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. *Id.* Further, the Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. *Jim Walter Homes Travelers Ins. v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (2003).

Questions of credibility and the weight and sufficiency to be given evidence are matters within the province of the Commission. *See Smith-Blair, Inc. v. Jones*,

supra; *Swift-Eckrich, Inc. v. Brock*, 63 Ark. App. 188, 975 S.W.2d 857 (1998). The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Smith-Blair, Inc. v. Jones, supra*; *Arnold v. Tyson Foods, Inc.*, 64 Ark. App. 245, 983 S.W.2d 444 (1998). Furthermore, it is well established that it is within the Commission's province to weigh all the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). The Commission is entitled to review the basis for a doctor's opinion in deciding the weight and credibility of the opinion and medical evidence. *Smith-Blair, Inc. v. Jones, supra*; *Maverick Transp. v. Buzzard*, 69 Ark. App. 128, 10 S.W.3d 467 (2000).

In this case, the claimant has failed to establish that she sustained a back injury as a result of a specific incident, which arose out of and in the course of her employment with respondent employer, within a reasonable degree of medical certainty. She has provided no credible evidence to support a specific incident of injury, other than her own self-serving testimony and subjective complaints of pain. The medical records indicate that there was reported tenderness, but there was no spasm nor anything else that would constitute an objective finding to support a compensable claim.

In this examiner's opinion, the claimant herein simply does not establish by a preponderance of the evidence that there is a causal connection between her condition and any work activity in which she was engaged with respondent employer, within a reasonable degree of medical certainty.

The above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge