

**BEFORE THE ARKANSAS WORKERS' COMPENSATION
COMMISSION**

CLAIM NO. F104018

TERMEDIA JACKSON, EMPLOYEE	CLAIMANT
KINGSLAND SCHOOL DISTRICT, EMPLOYER	RESPONDENT NO. 1
RISK MANAGEMENT RESOURCES (TPA), INSURANCE CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED OCTOBER 28, 2004

Hearing before Administrative Law Judge Cynthia Estes Rogers on July 30, 2004, in Pine Bluff, Jefferson County, Arkansas.

Claimant represented by Mr. John L. Kearney, Attorney at Law, Pine Bluff, Arkansas.

Respondents No. 1 represented by Ms. Carol Lockard Worley, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by Ms. Judy W. Rudd, Attorney at Law, Little Rock, Arkansas.

A hearing was held on July 30, 2004, to determine the compensability of the claim filed herein.

The parties stipulated to the existence of the employee-employer-carrier relationship on March 27, 2001. It was further stipulated that the claimant's earnings were sufficient to entitle her to weekly indemnity benefits of \$152.00 for temporary total disability and for permanent partial disability benefits, based on an average weekly wage of \$227.33.

Claimant contends that she sustained a compensable injury to her left leg and back on March 27, 2001, while in the course and scope of her employment, as she attempted to empty a five-gallon mop bucket and immediately felt pain and strain to

her left leg and back. Claimant contends that she has never healed or improved sufficiently to return to work and that she is permanently disabled. Claimant contends that she is entitled to temporary total disability, permanent total disability, medical benefits, and lost wages from the date of alleged injury.

Respondents No. 1 contend that there are no objective findings to support the occurrence of a work-related injury on or about March 27, 2001. Respondents No. 1 further contend that they did not receive notice of any alleged injury until April 6, 2001, and that in the event compensability is found, respondents should not be held liable for payment of benefits until they received actual notice. Respondents No. 1 assert that, in the event the Commission does find the alleged injury to be compensable, additional medical treatment is not reasonable or necessary.

Respondents No. 1 contend that the claimant was not performing employment related services at the time of her injury and that her current problems for which she has received medical treatment associated with her alleged injury are actually associated with preexisting conditions for which respondents are not liable. Regarding the issue of temporary total disability, respondents No. 1 contend that the medical records do not support entitlement to temporary total disability benefits. Further, respondents No. 1 assert that the medical records do not support entitlement to permanent disability benefits or wage loss, as no impairment rating has been assigned in this matter.

Respondent No. 2, Second Injury Fund, contends that the claimant cannot prove by objective and measurable physical findings the existence or extent of permanent physical impairment causally related to a March 27, 2001, incident. Respondent No. 2 contends that claimant cannot prove that a compensable injury is

the major cause of any disability, impairment, or need for treatment. Respondent No. 2 further contends that the claimant is not permanently and totally disabled and is not entitled to permanent partial disability benefits in excess of any anatomical impairment rating, pursuant to Ark. Code Ann. § 11-9-522. Respondent No. 2 contends that claimant's lack of motivation to return to the work force is a factor which impedes the Commission's ability to adequately assess wage loss and should be considered in this claim. Alternatively, respondent No. 2 contends that there is no evidence of a combination of disabilities or impairments greater than the last injury in and of itself to prove Second Injury Fund liability.

STATEMENT OF THE CASE

Claimant is thirty-six years old. At the time of alleged injury, claimant worked as a custodian for respondent employer and testified that she had worked for respondent employer since about the middle of 1995. Claimant testified that on the morning of March 27, 2001, as she attempted to empty a five-gallon mop bucket at work, she immediately felt pain and strain to her left leg and back.

Claimant testified that she continued trying to work for about ten minutes, but the pain was worsening, so she reported the incident to Rick Garner, the principal of the school. Claimant testified that Mr. Garner instructed her to go and see Sammy Hartwick, the superintendent. Claimant testified that she walked to Mr. Hartwick's office and reported her injury to him, describing how it happened. She claims that he instructed her to see Bonnie Rogers, his bookkeeper, about the paperwork. Claimant stated that Ms. Rogers was not in that day.

Both Mr. Garner and Mr. Hartwick testified that claimant never reported the alleged injury to either of them on March 27, 2001. Mr. Garner testified that if

claimant had reported a work-related injury to him, he would have, indeed, sent her to see Mr. Hartwick. Likewise, Mr. Hartwick testified that if claimant had reported a work-related injury to him, he would have directed her to Ms. Rogers. Notwithstanding, claimant was well aware of the procedure for reporting a work-related injury, as she admitted on cross-examination that she had experienced four prior work-related injuries, filing workers' compensation claims in at least two of those cases. Notably, claimant had testified on direct-examination that she had not filed workers' compensation claims on her prior alleged work-related injuries.

Claimant testified that on March 27, 2001, after reporting her injury to Mr. Garner and Mr. Hartwick and realizing that Ms. Rogers was not in, she left her employment and went to see Dr. Nutt. Dr. Nutt's notes of March 27, 2001, show no indication of a work-related injury, although claimant testified that she told him about her injury. The notes simply refer to backache and joint pain. Claimant then saw Dr. Davis, the company doctor at that time. Claimant denied on cross-examination that she was aware that Dr. Davis was the company doctor at the time. However, in her deposition she stated that she did not like to see Dr. Davis because when she tells him she is having pain, he does not take her seriously.

Notably, the medical records reflect that claimant had seen Dr. Davis on March 26, 2001, the day *before* her alleged work-related injury, complaining at *that* time of pain in the lower back and left leg. Claimant testified that she could not recall having seen Dr. Davis the day before her alleged injury.

The records further indicate that claimant called Dr. Davis's office on March 27, 2001, to attempt to get more medication, complaining of head, back, and leg pain. However, the records of that date, the date of alleged injury, indicate no mention of

a work-related injury. According to the medical records, the first day claimant actually saw Dr. Davis for treatment after her alleged injury was on April 5, 2001, following a CT scan of April 2, 2001, ordered by Dr. Davis. Dr. Davis's notes of April 5, 2001, state, in pertinent part, as follows:

This 32 year old in at this time still complaining of pain in her back. Said her left back and into the left hip and thigh area. Said it's not been affected by the steroids, anti-inflammatories, etc. that was used.

. . . Exam at this time shows some mild tenderness in the area of the left SI Joint and slightly above it. Her straight leg raises shows local pain primarily only. Some pain in the hip. With flexion of the hip and knee the pain lessened somewhat. On palpitation of the anterior hip she is having a lot of pain there. Her CT scan report was finally obtained from the hospital that showed some sclerosis of L1, some facet degeneration, no true herniated disc.

Persistent low back pain, pain in the left groin and posterior left thigh - At this time question if she has a bursitis in the hip or other problems. Will go ahead and get orthopedic evaluation and see what they think.

No mention was made in Dr. Davis's notes of a work-related injury; still, claimant testified that she told him of her work-related injury of March 27, 2001.

Claimant then saw Dr. Hefley on April 18, 2001. This was the first time, according to the medical records, that the mop incident was mentioned to a doctor. She then saw Dr. Covey on May 16, 2001, and gave him a history of a glass door bumping against her back. On cross-examination, claimant denied telling Dr. Covey this. Dr. Covey's notes from October 29, 2001, indicate that claimant asked him about making corrections to some of her disability forms, as he had apparently indicated that her source of injury was getting caught in glass doors but that

apparently that was an old injury that she had resolved from, and the new injury was from emptying a mop bucket.

Although claimant was aware of the procedure for filing a workers' compensation claim, rather than doing that, records show that she initially turned her medicals over to her private health insurance. Respondent employer testified that they did not become aware of claimant's alleged work-related injury until April 6, 2001, at which time she filed the necessary paperwork.

Claimant testified that she had had previous back injuries. A door hit her in the back in 1997, injuring her back. In 1998, she slipped coming into work and hurt her left knee and lower back. In 1999, she slipped and fell in the gymnasium, hurting her left hip and lower back. Claimant further admitted to having been hospitalized just prior to March 27, 2001, for stress. She testified that she thought it was for vertigo, rather than stress.

Records reflect that after the alleged injury of March 27, 2001, claimant had a number of diagnostic tests performed, including a diskography, two MRI's, a bone scan, a myelogram, and a CT scan. Each test came back within normal limits. Only Dr. Covey noted a possible herniated disc at L4-L5. Dr. Davis, reading the same CT scan, found no true herniated disc. However, even Dr. Covey notes that he is unable to explain the reasons for claimant's symptoms.

Claimant saw a number of doctors total, including Dr. Collins; claimant participated in physical therapy he recommended. Claimant admitted on cross-examination that she asked Dr. Vestal Smith if he would fill out the necessary paperwork in order for her to obtain a handicap sticker. He would not agree to do that.

A Functional Capacity Evaluation was conducted on October 3, 2002, the results of which were noted as “invalid,” due to claimant’s lack of cooperation with the evaluation. Claimant admitted that no doctor has given her an impairment rating; however, claimant contends she is permanently and totally disabled. Claimant testified that she has not been able to work since March 27, 2001, cannot do her housework, and can only drive at times. She testified that although she received a letter on July 8, 2004, stating that she had been approved for social security disability benefits, she has not received any compensation whatsoever since March 27, 2001.

FINDING OF FACT

Claimant has failed to meet her burden of proving by a preponderance of the credible 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 an injury to her lower back and left leg 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 is nothing that would

constitute an objective finding to support a compensable claim. The results of each diagnostic test claimant submitted to has been within normal limits. Claimant has been issued no impairment rating and the Functional Capacity Evaluation results were invalid due to claimant's lack of full cooperation with the evaluation. Further, claimant had a history of back and leg pains prior to the date of this alleged injury.

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 alleged 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