

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F400094

KAREN MAXWELL, EMPLOYEE

CLAIMANT

**PULASKI COUNTY SPECIAL SCHOOL DISTRICT,
EMPLOYER**

RESPONDENT

**RISK MANAGEMENT RESOURCES (TPA),
INSURANCE CARRIER**

RESPONDENT

OPINION FILED SEPTEMBER 1, 2004

Hearing before Administrative Law Judge Cynthia Estes Rogers on June 3, 2004, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. George S. Ivory, Jr., Attorney at Law, Little Rock, Arkansas.

Respondents represented by Ms. Betty J. Demory, Attorney at Law, Little Rock, Arkansas.

A hearing was held on June 3, 2004, to determine the compensability of the claim filed herein.

The parties stipulated to the existence of the employee-employer relationship on September 11, 2003. It was further stipulated that the claimant's earnings were sufficient to entitle her to weekly indemnity benefits of \$210.00 for temporary total disability and permanent partial disability benefits.

Claimant contends that she fell during the pre-trip inspection of the bus she was driving for Pulaski County Special School District, injuring her right leg and lower back. She contends her injuries are compensable and seeks payment of her medical expenses, as well as indemnity benefits and attorney's fees.

Respondents controvert this claim, contending that the claimant received no injury but suffers from a pre-existing condition and that there is no causal connection between her pre-existing condition and her employment.

STATEMENT OF THE CASE

Claimant contends that after climbing up on the bus to adjust the mirror during the pre-trip inspection of the bus she was driving for Pulaski County Special School District, she fell, injuring her right leg and lower back. No one witnessed the purported fall, and claimant did not immediately report the incident to her employer. Claimant did not seek medical attention immediately for her pain, but complained of lower back and leg pain to her obstetric/gynecology physician, Dr. Morse, during a pre-scheduled, routine yearly examination on September 24, 2003.

Although claimant testified that she told Dr. Morse she was “injured on the job,” that she “fell,” Dr. Morse’s notes simply state that claimant complained of right leg pain from the right buttocks that radiates down the leg to the foot, that the pain had been ongoing for four months, and that it was worse after driving the bus. Dr. Morse’s notes make no mention of a work-related fall or injury. Dr. Morse did note that claimant had received a steroid shot in July, 2003, into the hip, which “helped a lot.” Dr. Morse ordered an MRI.

Claimant admitted during cross-examination that she has been treated for years for fibromyalgia or muscle-skeletal type pain. She admitted that she has taken various pain medications for years. Further, she admitted that she had previously been under Dr. Dale Calhoun’s care, receiving hip injections for pain radiating down her right leg on July 9, 2003, while she was off work during the summer break.

Beulah Garvin, claimant's supervisor, testified that claimant first reported her alleged injury to her employer on October 10, 2003, when she brought in an off-work slip from Dr. Calhoun. Claimant did not fill out the workers' compensation papers, however, until October 15, 2003. On Form N, claimant noted the date of accident as "8/19/03." Claimant testified that she could not recall the exact date of her injury, so she put "8/9" on the paperwork, meaning "August or September." However, Beulah Garvin testified that "8/19/03" was written on Form N regarding date of injury because when claimant reported it to her, claimant could not remember when the incident happened and said she thought it might have been on the first day of school, which was August 19, 2003.

Claimant was referred by Dr. Calhoun to Dr. Scott Schlesinger for neurosurgical consultation. Dr. Schlesinger first saw claimant on October 14, 2003. His notes reflect that claimant gave a history of "hurting her back at work two months ago. She complains of back pain and right hip and leg pain." Dr. Schlesinger states that after carefully reviewing the multiple images of the MRI of the lumbar spine independent of the radiologist and then comparing that to the radiologist's interpretation, he found evidence of a "broad based disc protrusion at the L4-5 level with some central canal stenosis and lateral recess narrowing," which does not appear to be severe. He opines as follows:

Low back pain has many etiologies. The back pain may come from the facet joint arthritis, degeneration of discs, musculoskeletal symptoms, rheumatologic disorders, etc. There are long list of problems that are not surgical in nature that can give rise to low back pain. The differential diagnosis for leg pain could include neurogenic leg pain from neuropathy, radiculopathy, plexopathy, ischemic leg pain from vascular disease, rheumatologic disorders, etc.

In her case, I suspect her problem is coming from the L4-5 level, but it does not appear to be severe enough to warrant surgery. The pain seems to be out of proportion to the severity of the stenosis.

Therefore, I would recommend exhausting all conservative measures before considering surgery. I have set her up for physical therapy and an epidural steroid injection.

Claimant eventually underwent lumbar spine surgery for disc herniation on November 13, 2003, received subsequent caudal epidural steroid injections, and then was released from Dr. Schlesinger's care on January 6, 2004. By February 17, 2004, she had returned to Dr. Schlesinger, complaining of continued problems. He felt there was nothing left to be done surgically, ordered a couple of weeks of physical therapy, and prescribed anti-inflammatories and pain medication. He eventually referred her to Dr. William Ackerman, III.

Dr. Ackerman saw claimant first on April 6, 2004, at which time he ordered tests and prescribed several medications, including Hydrocodone for pain. Dr. Ackerman then saw claimant on May 4, 2004, and noted a plan for facet joint injection therapy, opined that a stronger analgesic was warranted, gave her a continued prescription for Hydrocodone, and released her to return to work with restrictions on lifting, pushing and pulling, and sitting for periods of no longer than thirty minutes at a time.

Beulah Garvin testified that no light duty work was available through respondent employer. Claimant did not return to work.

FINDING OF FACT

Claimant has failed to meet her burden of proving by a preponderance of the evidence that she sustained an injury arising out of and during the course and scope of her employment on September 11, 2003, or that any condition from which she suffered was causally related to her employment.

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 and Travelers Ins. v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (2003). Where there is conflicting medical evidence in a case, it is well settled that it is the Commission's duty to resolve such conflicts. *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001).

Dr. Ackerman opined on April 6, 2004, in a document entitled “Initial Patient Consultation,” that a “significant portion of [claimant’s] pain is related to a facet joint injury that was sustained when she sustained a twisting motion falling off of a bus,” and that the “cause of her pain was a work-related injury.” However, this April 6, 2004, consultation with claimant was Dr. Ackerman’s first visit with claimant; and, notably, no other physician seen previously by claimant had causally related her injuries to a work-related incident. In fact, her initial doctor visit after the alleged injury, on September 24, 2003, with Dr. Morse, made no mention of a fall from a bus or any work-related injury -- only that she had been experiencing lower back and right leg pain for four months and that driving the bus made it worse. Clearly, Dr. Ackerman solely based his opinion of the cause of claimant’s pain on claimant’s account of an alleged fall from a bus, which was neither witnessed by anyone nor reported to her physician or employer until well after the alleged incident. Further, Dr. Ackerman’s evaluation of claimant makes no mention of her well-documented, long-standing history of fibromyalgia or musculoskeletal pain, to which she admitted in her testimony.

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).

It is questionable to this examiner that no doctor previously seen by claimant before Dr. Ackerman opined that her problems were causally related to the fall she alleged she experienced while at work and that after seeing claimant on only one occasion and reviewing the notes from the referring doctor, which notably makes *no* mention of any work-related fall, Dr. Ackerman would conclude that a “significant portion” of claimant’s problems were “sustained when she sustained a twisting motion falling off of a bus,” and that the cause of her pain was, therefore, “a work-related 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 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