

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F307136

THERESA OVERSTREET,
EMPLOYEE

CLAIMANT

PONTIAC COIL INC.,
EMPLOYER

RESPONDENT

LIBERTY INSURANCE CORPORATION,
INSURANCE CARRIER

RESPONDENT

OPINION FILED APRIL 26, 2004

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, at Searcy, White County, Arkansas.

The claimant was PRO SE.

The respondents were represented by HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on January 28, 2004 in Searcy, Arkansas. A prehearing order was entered in this case on November 14, 2003. A copy of this prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were submitted by the parties either in the prehearing order or at the start of the hearing and are hereby accepted:

1. The parties stipulate to the employment relationship.

2. The claimant alleges that she sustained a specific injury on 5/8/03.
3. The respondent has paid no benefits.
4. The claimant's compensation rates are \$260 per week for total disability and \$195 per week for permanent partial disability.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant sustained a compensable injury with objective medical findings.
2. Whether the respondent gets a credit for group insurance payments.
3. Benefits including temporary disability benefits.

DISCUSSION

1. Compensable Injury

To prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: (1) an injury arising out of and in the course of employment; (2) that the injury caused internal or external harm to the body which required medical services or

resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the injury; and (4) that the injury was caused by a specific incident identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102 (4)(A)(i) (Repl. 2002). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997). In the present case, however, I find that the claimant has established each of the requirements necessary to establish a compensable injury.

The specific incident at work is not in dispute. The claimant was standing on a ladder cleaning and counting parts on shelves on May 8, 2003, in preparation for inventory. The claimant essentially fell off the ladder, sustaining trauma with internal and external harm to various parts of her body in the incident. The trauma, as discussed more fully below, included various soft tissue injuries including cuts, scrapes, and bruises. Therefore, I find that the claimant has established by a preponderance of the evidence the first, second, and fourth requirements to establish a compensable injury.

With regard to the objective findings requirement, Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2002) provides that "A compensable injury must be established by medical evidence supported by objective findings as defined in subdivision (16) of this section." In this regard, Ark. Code Ann. § 11-9-102(16)(A)(i) provides that "'Objective findings' are those findings which cannot come under the voluntary control of the patient."

In the present case, the claimant's supervisor and her co-worker provided the claimant first aid immediately after the fall. Their reports prepared some two months after the incident document the presence at the time of injury of cuts and scratches requiring antibiotic ointment and band-aids. In addition, Ms. Watson and Ms. Bianca observed the presence of bruising on various parts of the claimant's body shortly after the fall. In addition, Ms. Bianca observed a bruising color change over time consistent with a resolving bruise.

Based on the credible descriptions of bruises, cuts, and scratches in the record, I find that the visual observations described in the record are "objective" in that they were not under the voluntary control of the patient.

Furthermore, I find that the claimant's compensable soft tissue injury is established by medical evidence. In

this regard, I note that Dr. Vondran's July 25, 2003 comments on the respondent employer's disability claim form indicates that the claimant was experiencing disabling cervical, thoracic and lumbar pain from her work related injury. Likewise, physical therapist Stephen Joseph's July 23, 2003 letter to Dr. Killough describes the incident at work, the persistence of symptoms associated with the claimant's right shoulder girdle and indicates that, in light of negative MRI results, the injury appears to be only "soft tissue" in nature. Nevertheless, there is also no dispute that the diagnostic testing performed on the claimant was appropriate in light of the bruising described by the hearing witnesses (which I find credible). See T. 67.

However, there is also no dispute that the claimant's co-worker, supervisor, and hearing witnesses are not medically trained. Furthermore, the claimant conceded that because she initially tried to work through her injury without going to the doctor, the visible bruise over muscles in the arm area, i.e., the area whose symptoms still persisted at the time of the hearing, resolved before she first presented to Dr. Vondran for her work related injury some five weeks after the injury occurred. In addition, the claimant concedes that Dr. Vondran did not see the bruise in

the hip area because that bruise was concealed by the claimant's pants when she visited Dr. Vondran. Therefore, if any objective findings of injury were ever documented by the claimant's treating medical providers, those objective findings are not documented in the written reports, forms and letters admitted into evidence.

The respondents apparently interpret Ark. Code Ann. § 11-9-102(16)(A)(i) in such a manner that the observations of a claimant's co-workers, friends and family members can never satisfy the requirement of "objective findings" within the meaning of the law. My research indicates that the Arkansas Courts have failed to date to specifically decide in any published opinion whether the visual observations of non-medical co-workers, friends and family members can qualify as "objective findings" under the law.

However, I note that the provisions of the Arkansas Workers' Compensation Law at issue are to be strictly construed. Ark. Code Ann. § 11-9-704(c)(3). On this point, the Arkansas Supreme Court has explained:

Strict construction means narrow construction. *Arkansas Conf. Seventh Day Adventists v. Benton Cty. Bd. Of Equalization*, 304 Ark. 95, 800 S.W.2d 426 (1990). In *Thomas v. State*, 315 Ark. 79, 864 S.W.2d 835 (1993), we wrote that strict construction requires that nothing be taken as intended that is not clearly expressed. The

doctrine of strict construction is to use the plain meaning of the language employed. *Holaday v. Fraker*, 323 Ark. 522, 915 S.W.2d 280 (1996). Even when statutes are to be strictly construed, however, they must be construed in their entirety, harmonizing each subsection where possible. *Min-Ark. Pallet Co. v. Lindsey*, 58 Ark. App. 309, 950 S.W.2d 468 (1997).

Lawhon Farm Services v. Brown, 335 Ark. 272, 984 S.W.2d 1 (1998).

Because the definition of "objective findings" in Ark. Code Ann. § 11-9-102(16) also includes the term "the patient", one possible interpretation of this section is that the findings presented to the Commission must be made by a physician in order to constitute "objective findings" under our law. However, the Arkansas Supreme Court appears to have already rejected that statutory interpretation. See Continental Express, Inc. v. Freeman, 339 Ark. 142, 4 S.W.3d 124 (1999). Absent any subsequent published guidance directly on point, as I interpret the Court's reasoning in Freeman, the weight to be accorded objective findings made by any person, physician or otherwise, present a question of fact, i.e., whether the person whose objective findings are at issue has the capacity or training necessary to render a valid finding which is not within the voluntary control of the patient. Id.

In the present case, I find that no special training would be necessary to visually discern the described discoloration caused by the claimant's bruising or to discern the cuts or scrapes described by her co-workers. I also find that the preponderance of the evidence establishes that the four people whose objective findings were presented to me each had the capacity to render valid visual observations of the physical injury described by each. I further conclude from the nature of the findings that the observations of bruising, a cut and a scrape were not within the voluntary control of the claimant. I therefore find that the claimant's compensable injury is established by medical evidence supported by objective findings.

2. Appropriate Benefits

The employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). The claimant must prove by a preponderance of the evidence that she is entitled to medical treatment. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.3d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the

Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

In the present case, the claimant's credible testimony indicates that her work related injury did not resolve when she attempted to work through it. As indicated above, the respondents do not dispute that the diagnostic testing that she received was reasonably necessary in light of the bruising described by hearing witnesses. In addition to diagnostic testing, Dr. Vondran's July 25, 2003 comments include neurosurgical consult and physical therapy, which I also find reasonably necessary in light of the persistent nature of the claimant's symptoms after the incident at work. The respondents' questions regarding the reasonable necessity of physical therapy notwithstanding, Dr. Vondran's July 25, 2003 comments and Mr. Joseph's July 23, 2003 letter each persuade me that the physical therapy Mr. Joseph provided at Dr. Vondran's direction was causally related to persistent symptoms that arose out of the claimant's work related injury. I therefore find that the respondents are liable for the medical treatment at issue that the claimant has received.

An injured employee is entitled to temporary total disability compensation during the time that she is within

her healing period and is totally incapacitated to earn wages. Arkansas State Highway and Transportation Department v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). An injured employee is entitled to temporary partial disability compensation during the time that she is within her healing period and suffers only a decrease in her capacity to earn the wages that she was receiving at the time of the injury. Id.

In the present case, although some of the claimant's objective findings resolved within approximately six weeks of her injury, the underlying symptoms persisted until at least September 12, 2003, the date of Mr. Joseph's last letter in the record. Mr. Joseph's letter persuades me that the claimant was improving with physical therapy prior to September 12, 2003, and on that basis, I find that the claimant was within the healing period for her soft tissue injury until September 12, 2003, when Mr. Joseph advised Dr. Vondran that a discharge from physical therapy was appropriate.

Dr. Vondran's July 25, 2003 comments regarding current and anticipated disability, along with the claimant's testimony that she did in fact return to work on September 9, 2003, persuade me that a preponderance of the evidence

establishes that the claimant was also incapacitated from working from June 16, 2003 until September 9, 2003.

However, the claimant received disability benefits during a portion of the period in question through Weyco, Inc. at work. The claimant's prehearing questionnaire answers and testimony also indicate that some of her medical benefits at issue were paid by Blue Cross. The provisions of Ark. Code Ann. § 11-9-411 (Repl 1996) are applicable to the payments made by Weyco and any payments made by Blue Cross. Consequently, the respondents are entitled to a dollar for dollar offset for benefits paid by the group providers. See Dooley v. Automated Conveyor Systems, ___ Ark. App. ___, 76 S.W.3d 254 (CA 03-459, Ark. App. 1-28-2004).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The parties stipulate to the employment relationship.
2. The claimant alleges that she sustained a specific injury on 5/8/03.
3. The respondent has paid no benefits.
4. The claimant's compensation rates are \$260 per week for total disability and \$195 per week for permanent partial disability.

5. The claimant has established by a preponderance of the evidence that she sustained a compensable injury on May 8, 2003.
6. The claimant has established that the medical treatment discussed herein was reasonably necessary for and causally related to the injury she sustained on May 8, 2003.
7. The claimant has established by a preponderance of the evidence that she was temporarily totally disabled from June 16, 2003 until September 9, 2003.
8. The respondents are entitled to a dollar for dollar offset for any disability or medical benefits provided to the claimant by Weyco, Inc. or by Blue Cross Blue Shield.

AWARD

The respondents are directed to pay benefits in accordance with the findings of fact set forth herein.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge