

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F305029**

<b>WELCOME TURNER, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>CONAGRA POULTRY CO., SELF-INSURED EMPLOYER</b>	<b>RESPONDENT</b>
<b>SEDGWICK CLAIMS MGMT. SVS., INC., TPA</b>	<b>RESPONDENT</b>

**OPINION FILED FEBRUARY 24, 2004**

Hearing before Administrative Law Judge J. Mark White on January 27, 2004, in El Dorado, Union County, Arkansas.

Claimant represented by Mr. R. Theodor Stricker, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by Mr. Norwood Phillips, Attorney at Law, El Dorado, Arkansas.

**STATEMENT OF THE CASE**

On January 27, 2004, the above-captioned claim came on for a hearing in El Dorado, Arkansas. A pre-hearing conference was conducted on November 10, 2003, and a Prehearing Conference Order was entered that same day. A copy of the November 10, 2003, Prehearing Conference Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues and respective contentions, as amended, were properly set forth in the Prehearing Conference Order.

The parties stipulated that the Arkansas Workers' Compensation

Commission has jurisdiction of this claim; that the employee/employer/carrier relationship existed at all relevant times, including March 16, 2002; and that the claimant last worked for the respondent on March 19, 2002.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable injury; whether the claimant is entitled to associated medical and indemnity benefits; and controversion and attorney's fees.

The claimant contends that he sustained a compensable injury to his spine, neck and right hand on March 16, 2002; that he is entitled to temporary total disability benefits from March 19, 2002, to a date yet to be determined; and that he is entitled to attorney's fees.

Respondents contend that the claimant did not sustain an accidental injury arising out of and in the course of his employment with respondent ConAgra Poultry Company.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing 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 hereby made in accordance with Ark.

Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that the existence and extent of his injury is established by medical evidence, supported by objective findings.
4. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury on March 16, 2002.
5. The respondents have controverted this claim in its entirety.

## **DISCUSSION**

### **I. History**

The claimant worked for the respondent-employer for more than 25 years as a quality assurance technician and supervisor. He testified that on March 16, 2002, he experienced a sharp pain in his back while lifting a 70-pound box. He testified that he reported the injury to his supervisor, Marcus Hall, and to a plant nurse, and that he sought treatment from Dr. D'Orsay Bryant the following Tuesday, March 19.

The record contains no treatment notes or other records from Dr. Bryant for March or April, 2002, though a disability questionnaire signed by Dr. Bryant notes that he first saw the claimant for a lumbar and thoracic strain on March 19, 2002. March 19 was also the last time the claimant worked a full day. Since that time he has been on short-term, and then long-term, disability. His medical treatment has been paid for by his group health insurance. He has received no workers' compensation benefits for this alleged injury.

The remaining testimony and medical record contain little corroboration of the claimant's testimony, beyond the notation mentioned above. The same disability report signed by Dr. Bryant also recites that the claimant had been having problems since February 25, 2002, well before this alleged work incident. However, a letter from Dr. Robert Germann dated October 4, 2002, records the claimant as saying he injured his back on the job on March 16. The claimant testified that on March 19, he discussed his injury with Jeff Davis, the respondent-employer's quality assurance manager. Davis testified, however, that the claimant never report or discussed an injury with him. Mona Johnson, the occupational nurse case manager for the respondent-employer, testified that she could locate no records showing that the claimant reported an injury in March, 2002.

## II. Adjudication

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. § 11-9-102 (4)(A)(i) 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 findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the existence and extent of 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. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. *Id.* Objective findings are those which cannot come under the voluntary control of the patient. ARK. CODE ANN. § 11-9-102(16).

I find that the claimant has failed to prove by a preponderance of the evidence that the existence and extent of his injury is established by medical evidence, supported by objective findings. Multiple MRI studies have failed to reveal any evidence of injury. The only objective findings of any kind in the medical

record are EMG/nerve conduction test results taken seven months after the alleged work incident, and three isolated mentions by Dr. Bryant of muscle spasms in the low back on May 28, 2002, November 11, 2002, and December 9, 2002. Notably, these mentions of spasms came months after the alleged work injury, and in his visit of May 13, 2002, Dr. Bryant noted no spasm. It is true that spasms may constitute objective findings sufficient to establish a compensable injury. *Continental Express, Inc. v. Freeman*, 339 Ark. 142, 4 S.W.3d 124 (1999). However, the record herein establishes that the claimant's complaints and symptoms, and the objective findings in particular, are more likely due to a diabetic neuropathy rather than a work injury.

Though Dr. Bryant provided the claimant's initial treatment, nothing in the record suggests that he has ever opined as to the etiology of the claimant's complaints. The only hint is a check mark by "unknown" on a disability form asking whether the claimant's injury is work related.

The record contains only one opinion regarding causation, made by a neurologist, Dr. Robert Germann. Dr. Germann saw the claimant for an evaluation of his continuing low back and neck pain on October 4, 2002. Because the claimant's lumbar MRI results were normal, Dr. Germann ordered diagnostic tests "to rule out a radiculopathy based upon his diabetes causing a neuropathy" and "to rule out a disk or arthritic spur." On October 22, 2002, based on the results of an MRI and an

EMG/nerve conduction study, Dr. Germann stated that the tests revealed “a diffuse motor axonal neuropathy compatible with a neuropathy and possibly secondary to diabetes.” Nothing in the record contradicts this causal opinion, and nothing in the medical evidence suggests or establishes any alternate etiology of the claimant’s symptoms. I further note that the record is devoid of any mention of neck or right hand complaints prior to October 28, 2002, more than seven months after the alleged work incident. The claimant’s contention that these neck and hand complaints are related to his work incident is a dubious proposition, at best. This apparently gradual development of symptoms in the neck and hand is more consistent with the diabetic neuropathy described by Dr. Germann rather than a specific-incident work injury.

The only objective findings of injury are muscle spasms and EMG/nerve conduction test results, and Dr. Germann’s opinion raises substantial doubt as to whether these findings are the result of the alleged work injury, or the result of a diabetic neuropathy. Considering the lack of evidence connecting these objective findings with the alleged work injury, and considering the substantial length of time between the alleged work injury and the documented objective findings, I find that the claimant has failed to prove by a preponderance that the existence and extent of his injury is established by medical evidence, supported by objective findings.

Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury on March 16, 2002. The remaining issues identified by the parties are thus moot and are not considered herein.

**AWARD**

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury on March 16, 2002. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

**IT IS SO ORDERED.**

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**HON. J. MARK WHITE**  
Administrative Law Judge