

**BEFORE THE ARKANSAS WORKERS' COMPENSATION  
COMMISSION**

**CLAIM NO. F403934**

**LOIS A. BOSWELL, EMPLOYEE** **CLAIMANT**

**ARKANSAS STATE HIGHWAY AND  
TRANSPORTATION DEPARTMENT,  
EMPLOYER** **RESPONDENT**

**PUBLIC EMPLOYEE CLAIMS DIVISION,  
INSURANCE CARRIER** **RESPONDENT**

**OPINION FILED JANUARY 12, 2005**

Hearing before Administrative Law Judge Cynthia Estes Rogers on October 22, 2004, in Monticello, Drew County, Arkansas.

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

Respondents represented by Mr. William L. Wharton, Attorney at Law, Little Rock, Arkansas.

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

The parties stipulated to the existence of the employee-employer relationship on April 20, 2004. It was further stipulated that the claimant's earnings were sufficient to entitle her to weekly indemnity benefits in the amount of \$281.00 for temporary total disability and \$211.00 for permanent partial disability benefits.

Claimant contends that while working for respondent-employer, she was assaulted by a fellow employee, sustaining a back injury as a result. The claimant

contends that she is entitled to medical treatment, temporary total disability benefits, and attorney's fees.

Respondents controvert the claim in its entirety and contend that the evidence does not support an assault by a co-worker or any injury allegedly sustained in the course and scope of claimant's employment with respondent-employer.

### **STATEMENT OF THE CASE**

Claimant testified that she is presently employed as a single axle truck driver with respondent-employer. She testified that she has worked for respondent-employer since 1999. Claimant testified that she is required to be at work at 7:00 a.m. each day. She testified that at around 8:00 a.m. on April 20, 2004, she was informed by James Meadows, her supervisor, that he needed to speak with her inside the office building at the area maintenance headquarters, where she had reported to work. Claimant contends that Mr. Meadows told her that a co-worker, Tunesia Hampton, had said that claimant told her not to listen to any of the bosses. Claimant denied to Mr. Meadows that she had said that.

Claimant testified that on her way out, she stopped Ms. Hampton and said to her, "Tunesia, I want to talk to you about this lie that has been told on me." Claimant testified that Ms. Hampton denied it, and claimant then said to Mr. Meadows and Ms. Hampton, "[y]'all need to stop putting my name in a bunch of mess." Claimant stated

that at that point, Marilyn Harris, another co-worker, came through the kitchen into the office, threw the door open, and said, “Who you mean, ‘y’all’?”

Claimant testified that she said to Ms. Harris, “Marilyn, this don’t concern you. This has nothing to do with you. This is between me, Meadows, and Tunisia.” Claimant testified that at that point, Ms. Harris came at her with her hand and was yelling, “Shut up! You’re always in other people’s business. You’re a troublemaker.” Claimant stated Ms. Harris was calling her names. Claimant testified that Ms. Harris then hit her twice in the face, between her eyes and nose, with her open hand, which caused claimant to lose her balance and fall backward. Claimant asserts that she fell back onto the concrete floor, injuring her back. She claims she started feeling “tight” around her shoulders and up her neck. She testified, “My chest was getting tighter, and I asked [Mr. Meadows and Ms. Harris] to call me an ambulance.” Claimant testified that her face was not marked in any way, as a result of the alleged blows from Ms. Harris.

Claimant testified that she had been treated for a heart problem about a month and a half prior to this incident and that Ms. Harris and Mr. Meadows knew claimant was on medication for her heart. Claimant admitted that some of the side-effects she has experienced from the heart medication are dizziness and lightheadedness; however, claimant denies that she was dizzy or lightheaded at the time of the alleged incident with Ms. Harris.

Claimant maintains that Mr. Meadows and Ms. Harris refused to call for an ambulance. She testified that Ms. Harris said, "You might as well get up and get off this floor and get back out there and go to work, because you're not hurt and you're not going to cause me to lose my job." Claimant testified that Mr. Meadows said he would have to call his supervisor to get approval to call an ambulance. After finally receiving some approval, an ambulance was called. Claimant testified that she remained on the floor approximately ten to fifteen minutes before the ambulance arrived, because she was hurting and was scared.

She was transported by ambulance to Bradley County Hospital in Warren where she was thoroughly checked out and released to go home. She testified that she started hurting that night and returned to the hospital, where she obtained some pain medication. She was then released, again, to return home.

Claimant testified that because she was still in pain, she followed up with Dr. Jon Dodson two days later. She did not return to work until after she had seen Dr. Dodson. He released her to return to work with restrictions on June 28, 2004, after which time she returned to work on July 12, 2004, on light duty for respondent-employer. Claimant asserts that she is still under her doctor's care and sees him every two weeks. She has received no workers' compensation benefits.

Mr. Meadows was called by claimant as a witness. He testified that he has been employed with respondent-employer for twenty-one years. He testified that he

was present during the entire altercation between claimant and Ms. Harris and that what happened was that Ms. Harris, who really had no business coming into that part of the building, came into the area where he, Ms. Hampton, and claimant were and started toward claimant, pointing her finger at her and saying, “That’s what’s wrong with you, all you do is run your mouth and talk all the time.”

Mr. Meadows testified that Ms. Harris may have gotten a little close to claimant but that claimant just, at that point, began backing up away from Ms. Harris and screaming, “Call the ambulance, call the ambulance.” Then, he testified that at that point, claimant just more or less laid down. He testified, “She didn’t fall down.” Mr. Meadows stated that Ms. Harris never made contact with claimant and that claimant never showed that she was in any kind of pain or that she was hurting in any way; he stated that she just laid there saying, “I want an ambulance.” He testified, “I know for a fact that she wasn’t hurt, because I seen the way that she went down.”

Mr. Meadows testified that he offered several times to take claimant to the emergency room in his truck, but she insisted on an ambulance. He testified that he was aware she was taking medication, but that he had been informed that as long as she took the medication, she was able to do any job out there and that it would not affect her work in any way. Mr. Meadows testified that he believed in regard to the incident between claimant and Ms. Harris that claimant “staged the whole thing.”

Ms. Harris and Ms. Hampton were called to testify by respondents. Their testimony corroborated Mr. Meadows' testimony. They, too, testified that they believed claimant had staged the alleged fall and injury. They both testified that claimant just basically sat down, but certainly did not *fall*. Ms. Harris admitted that she pointed her finger at claimant and may have been in claimant's personal space, but she denied ever touching claimant.

The claimant's medical exhibit introduced at the hearing contains no index. No medical records were introduced from claimant's emergency room visit on April 20, 2004. The medical records introduced from Dr. Dodson simply state that claimant has been under his care since April 22, 2004, and one note from Dr. Dodson, dated August 5, 2004, states that claimant had returned to him reporting "continued difficulty with her chronic lumbar pain." However, no notes or reports from Dr. Dodson contain a history of the alleged injury, cause or, etiology of her alleged pain.

The medical records contain one hand-written note dated August 26, 2004, written on a Little Rock Cardiology Clinic prescription pad, that refers to claimant's chest pain. It states that the evaluation demonstrated "normal coronary anatomy but an *idiopathic* [illegible] cardiomyopathy." [Emphasis added.] It continued, "Due to her weak heart, she has physical limitations that prevent her from sustained physical activity." It appears to be signed by Dr. David Mego; however, the signature is difficult to ascertain.

## **FINDING OF FACT**

Claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable injury arising out of and during the course and scope of her employment on April 20, 2004, or that any work-related injury she may have sustained was the major cause of her condition.

## **DISCUSSION**

Claimant contends that she has proven that Ms. Harris invaded her personal space. She insists that once that has been proven, the burden shifts to respondents to prove that Ms. Harris intended no malice and that she did not make contact with claimant. This is not the law. Claimant has the burden of proving her case.

In order to prove compensability of a claim, a claimant must prove by a preponderance of the evidence that: (1) the injury arose out of and in the course of his employment; (2) the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) the injury was a major cause of the disability or need for treatment; and (4) the injury must be established by medical evidence supported by objective findings. *See* Ark Code Ann. § 11-9-102(4)(A)(ii)(a) and 11-9-102(4)(E)(ii); *West v. Arkansas Electric Cooperative Corp.*, CA 03-1450 (September 15, 2004); *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). In addition to satisfying the “major cause” requirement, however, a claimant

must also prove a causal connection between his employment and the injury. *Id.* Causation remains an essential element to be proven by a claimant in order to establish a claim of compensability.

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, no mention is made in any medical record in evidence of any alleged work-related incident. No objective medical findings exist to establish that a work-related injury occurred on April 20, 2004. Three witnesses testified that claimant was neither struck by Ms. Harris nor fell to the ground, including claimant's supervisor, Mr. Meadows, who was called by claimant, herself, as a witness. Each witness, other than claimant, testified that the fall was "staged."

Claimant has failed, in this examiner's opinion, to causally link any medical problem she purportedly has to the April 20, 2004, altercation with Ms. Harris. Claimant has simply failed to prove by a preponderance of the credible evidence that she sustained a compensable injury on April 20, 2004, or that any injury she did sustain was the major cause of her need for treatment.

For all of the above-stated reasons, this claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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CYNTHIA ESTES ROGERS  
Administrative Law Judge