

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F303966

MARILYN JORGENSEN,
EMPLOYEE

CLAIMANT

BAXTER CO. REGIONAL HOSPITAL,
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED AUGUST 29, 2005

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Mountain Home, Baxter County, Arkansas.

The claimant was represented by HONORABLE FREDERICK S. "RICK" SPENCER, Attorney at Law, Mountain Home, Arkansas.

The respondent was represented by HONORABLE WALTER A. MURRAY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on June 1, 2005 in Mountain Home, Arkansas. A prehearing order was entered in this case on December 12, 2003. 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 record.

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 that the employer-employee-carrier relationship existed at all times pertinent hereto including July 7, 2001.
2. If this claim is found compensable, the claimant's compensation rate for temporary total disability is \$137.00 per week.

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

1. Compensability of low back injury.
2. Compensability of organic brain injury.
3. Temporary total disability benefits beginning on January 7, 2003, the date the claimant last worked for the respondent.
4. Unpaid medical expenses.
5. Attorney's fees.
6. Whether claims being decided by the Arkansas Workers' Compensation Commission, being a part of the Executive Branch of Government, violates the Due Process Clause of the United States and the Arkansas Constitution, violates Ark. Const. Art. 4, §§ 1 & 2; Ark. Const. Art. 5, § 32; Ark. Const.

Art. 2, §§ 2 & 3; Ark. Const. Art. 2, § 18; and
Ark. Const. Art. 2, § 29.

The record consists of the two-volume June 1, 2005 hearing transcript and the exhibits contained therein. In addition, on May 24, 2005, I "blue-backed" to designate as part of the record the claimant's recusal motion and brief, the documents attached thereto, and a copy of the recusal guidelines previously adopted by the Arkansas Workers' Compensation Commission. Today, I have also "blue-backed" to designate as part of the record, claimant's post-hearing brief filed on July 18, 2005 and the respondent's post-hearing brief filed on July 15, 2005.

DISCUSSION

1. Evidentiary Objections

Mr. Murray objected to the proffered testimony of Rimmel Layton, who appeared at the hearing to testify but who was not timely identified by the claimant prior to the hearing and therefore not named by the claimant's attorney as a witness pursuant to the requirements of the prehearing order filed on December 12, 2003. The claimant having failed to show good cause for failure to comply in furnishing Mr. Layton's name to Mr. Murray in a timely

manner, I find that Mr. Layton's testimony should be excluded from the record.

Mr. Murray also objected on page 13 of the hearing transcript regarding alleged witness-leading on direct examination, and Mr. Murray objected to the form of a question on page 27 of the hearing transcript. I do not find Mr. Spencer's questions on page 13 and 14 so leading, and I do not find sufficient fault in the form of the question at issue on page 27, so as to exclude the testimony obtained in response to these questions. The answers at issue were therefore considered in rendering a decision in this case.

2. Constitutional Issues

In the present case, the claimant asserts that the Commissioners and the Administrative Law Judges of the Arkansas Workers' Compensation Commission are subjected to external pressures which prevent claimant-parties from receiving a fair and unbiased decision. Although the claimant's post-hearing brief alleges violations of both constitutional Separation of Powers and constitutional Due Process, I note that her allegations and arguments are directed toward bias, impartiality, and perceived inadequate procedural protections to ensure independent decision

making. I understand the claimant's argument to primarily address issues related to procedural due process issues and not separation of powers.¹

The claimant has submitted into evidence an affidavit of former Administrative Law Judge (ALJ) C. Michael White and an affidavit of former ALJ William "Bill" Daniels. In addition, the claimant's post-hearing brief cites newspaper articles regarding former ALJ Eileen Harrison. Because no newspaper articles were ever proffered or accepted into the hearing record, I am striking from consideration page 4 of claimant's post-hearing brief, and the circumstances regarding ALJ Harrison's termination as purportedly described in newspaper articles will therefore not be considered further in this opinion. If I were nevertheless required to consider newspaper articles not in the record, I would feel constrained to note that the facts surrounding ALJ Harrison's termination were apparently never resolved by

¹On pages 11-12 of her post-hearing brief, the claimant appears to quote some precedent stating standards for a "separation of powers" analysis. However, the claimant's brief has not provided a legal citation indicating the source of the purported quote, and I note that the Withrow decision discussed on page 12 of the claimant's post-hearing brief involved considerations of procedural due process not separation of powers.

any published judicial determination. See Harrison v. Coffman, 111 F. Supp. 2d 1130 (E.D. Ark. 2000).

A. Due Process- Actual Bias

Due process requires impartiality on the part of persons performing judicial or quasi-judicial functions. Schweiker v. McClure, 456 U.S. 188, 195 (1982). Hearing officers are presumed to be unbiased. Id. The burden of establishing a disqualifying interest lies with the party making the allegation. Id. at 196. The presumption against bias "can be rebutted by a showing of conflict of interest or some other reason for disqualification." Id. at 195.

In her post-hearing brief, the claimant asserts that "[t]he evidence submitted by the claimant establishes that the executive branch of the State of Arkansas and private interests have exerted pressure on Workers' Compensation Administrative Law Judges and Commissioners which have infringed upon their decisional independence and resulted in actual bias and the appearance of bias in the decisions of the Administrative Law Judges and Commissioners."

However, I find that the affidavits from ALJs White and Daniels do not establish actual bias or the appearance of bias on my part, or on the part of any Commissioner. To the

contrary, the claimant's Motion to Recuse filed in this case instead stated:

It should be very clear that the undersigned believes that Judge Churchwell would not consciously intend to discriminate against the claimant in this case. However, even Judges Daniels and White admit that subconsciously their decisions may have been affected because of this known treatment by the Commission's administration and the Chief Administrative Law Judge and the Chief Executive Officer and the Commissioners appointed by the Governor that they may be fired if they vote for the legitimate claims of workers who have been injured or killed on the job in Arkansas.

Likewise, in their affidavits, former ALJs White and Daniels confess a bias on their parts neither for or against legitimate claims of injured workers. Nor do the affidavits of former ALJs White and Daniels contain any firsthand knowledge establishing a bias in the decisions of our current Commissioners, either for or against legitimate claims of injured workers.

Further, neither affidavit indicates that either former ALJ has any personal knowledge of any ALJ being told by the Chief ALJ, the CEO of the Commission, the Chairman, the Governor, or anyone else that any ALJ is expected to maintain a quota of awards or denials, or should otherwise rule for or against any particular party in any particular case.

The affidavits offer no data to support any comments regarding rulings in claims involving Wal-Mart, or to support speculation that both ALJs were terminated for ruling too often in favor of claimants. From an evidentiary standpoint, these affidavit comments are therefore speculation and conjecture. As the claimant's attorney is well aware, speculation and conjecture are no substitute for credible evidence. Ark. Dept. of Correction v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991); Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979); Arkansas Methodist Hospital v. Adams, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

B. Due Process- Appearance of Bias or Lack of Decisional Independence.

The claimant's brief argues in the alternative that "[e]xternal pressure exerted by political and private interests upon the quasi-judicial administrative decision makers violates the due process rights of parties appearing before the agency and invalidates and renders void adjudicative procedure of the agency."

In Steiger v. State Line Tire Serv., 72 Ark. App. 250, 35 S.W.3d 335 (2000), the Arkansas Court of Appeals

described the law governing a procedural due process claim alleging inadequate procedural protections as follows:

Statutes are presumed to be constitutional and the burden of proving otherwise is placed upon the party challenging the legislation. *Golden v. Westark Community College*, 335 Ark. 41, 969 S.W.2d 154 (1998). All doubts are resolved in favor of a statute's constitutionality. *Id.* The U. S. Supreme Court has identified three factors to be considered when determining what type of due process is warranted. These factors, which were adopted by our court in *Quinn v. Webb Wheel Prods.*, 59 Ark. App. 272, 957 S.W.2d 187 (1997) are: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and (3) the government's interest, including the fiscal and administrative burdens that additional or substituted procedures would entail. *Id.*

With regard to the first factor, I note that the Arkansas Court of Appeals has previously stated that "[w]e have no difficulty in declaring that the private interest in workers' compensation disability payments is considerable." *Quinn v. Webb Wheel Prods.*, 59 Ark. App. 272, 957 S.W.2d 187 (1997).

With regard to the second factor, I note that the following procedural safeguards currently in place reduce the risk of erroneous deprivation of benefits in a legitimate workers' compensation case by promoting decisional independence.

The adjudicative decisions of the Arkansas Workers' Compensation Commission are ultimately the responsibility of a three-member Commission. The three members are appointed by the Governor for a six-year term. Ark. Code Ann. § 11-9-201(a). One member must either have five years' experience as an attorney representing employers in workers' compensation cases, or must otherwise be capable of classification "as a representative of employers." The second member must either have five years' experience as an attorney representing claimants in workers' compensation cases (or employees in labor relation matters), or must otherwise be capable of classification "as a representative of employees." The third member of the Commission, the Chairman, must be an attorney and must have been engaged in the active practice of law in the State of Arkansas for at least five years preceding his or her appointment. Id.

In determining that the three-member composition of the Arkansas Workers' Compensation Commission meets the due process requirements of the United States Constitution and the Arkansas Constitution, the Arkansas Court of Appeals has also noted that the members are full-time Commissioners required to devote their entire time to the Commission's duties. They are not required to advocate for any special

group, and there is no financial gain for the Commissioners depending on which way they vote, since their salaries are determined by the Legislature and not by private interest groups. Quinn v. Webb Wheel Prods., 59 Ark. App. 272, 957 S.W.2d 187 (1977). Also promoting the decisional independence of Commissioners under the current law, members of the Commission may be removed by the Governor only after notice and an opportunity for an open hearing and for specific grounds: inefficiency, neglect of duty, or misconduct. Ark. Code Ann. § 11-9-203.

With regard to administrative law judges, Ark. Code Ann. § 11-9-206(b)(1) provides that "[t]he commission may appoint as many...administrative law judges...as it deems necessary..." Under Ark. Code Ann. § 11-9-206(c):

It shall be the duty of an administrative law judge, under the rules adopted by the commission, to hear and determine claims for compensation and to conduct hearings and investigations and to make such orders, decisions, and determinations, as may be required by any rule or order of the commission.

As with the members of the Commission, administrative law judges are required to devote their entire time to the Commission's duties. They are not required to advocate for any special group, and there is no financial gain for administrative law judges depending on which way they vote

since their salaries are set by appropriation. See Ark. Code Ann. § 11-9-206(b) (3). See also Act 2088 of 2005.

The risk of an erroneous deprivation is further reduced by the fact that the Commission's administrative law judges are attorneys licensed by the State of Arkansas. The Chairman must also be an attorney. Attorneys in Arkansas are subject to disciplinary proceedings under the jurisdiction of the Arkansas Supreme Court Committee on Professional Conduct. The Arkansas Supreme Court has adopted the Model Rules of Professional Conduct as the standard of professional conduct of attorneys in Arkansas. Attorneys who violate the Model Rules of Professional Conduct are subject to disciplinary proceedings before the Supreme Court Committee on Professional Conduct. See generally Procedures of the Arkansas Supreme Court Regulating Professional Conduct Section 1.

The Arkansas Supreme Court has further ruled that, although the Model Rules of Professional Conduct do not contain the particular "appearance of bias" standard contained in the Arkansas Code of Judicial Conduct, the appearance of bias standard has nevertheless been extended to lawyers "because the meaning of the appearance of bias standard pervades the Rules of Professional Conduct and

embodies their spirit.” Acme Brick Co. v. Missouri Pac. R.R., 307 Ark. 363, 368, 821 S.W.2d 7, ___ (1991). The Court further determined that even non-attorney members of the Arkansas Highway Commission, although not subject to the jurisdiction of the Judicial Discipline and Disability Commission, are subject to the “appearance of bias” standard applicable to judges in the Code of Judicial Conduct. Id.

As yet another means of promoting decisional independence and avoiding the possible appearance of bias in administrative hearings, the Arkansas Workers’ Compensation Commission on April 7, 2003 adopted specific guidelines for administrative law judge recusal.

In addition to the procedural protections provided by the minimum qualifications and salary structure of ALJs and Commissioners discussed above, the removal standards applicable to members of the Commission, the prohibitions provided through the Model Rules of Professional Conduct, and the administrative law judge recusal policy adopted by the Commission, I note that any party’s greatest protection against the possibility of an erroneous deprivation is in the appeals provided in Ark. Code Ann. § 11-9-704 and in Ark. Code Ann. § 11-9-711.

In this regard, any party aggrieved by an administrative law judge's final order has an absolute right to a review by the Full Commission at no additional cost. The Full Commission may either review the record developed before the administrative law judge, or in its discretion, may hear parties or direct the taking of additional evidence. Ark. Code Ann. § 11-9-704(b). The Full Commission conducts a de novo review of both the law and the evidence and is not bound by the credibility determinations of the administrative law judge who heard the testimony. Stiger v. State Line Tire Serv., 72 Ark. App. 250, 35 S.W.3d 335 (2000). However, the Full Commission must be able to state the reasons for its own credibility determinations, especially when the Full Commission's credibility determination is contrary to the findings of the administrative law judge who actually observed the witnesses. Patterson v. Frito Lay, Inc., 66 Ark. App. 159, 992 S.W.2d 120 (1999).

Any party aggrieved by a final decision of the Full Commission has a right of appeal to the Arkansas Court of Appeals. Ark. Code Ann. § 11-9-711. The Court of Appeals reviews the decision of the Commission and not the decision of the administrative law judge. Patchell v. Wal-Mart

Stores, Inc., ____ Ark. App. ____, ____ S.W.3d ____ (CA 03-1087 Op. Del. May 19, 2004).

On issues of statutory interpretation, the Court of Appeals performs a de novo review. Dooley v. Automated Conveyor Sys., Inc., 84 Ark. App. 412, 143 S.W.3d 585 (2004). The Court of Appeals applies the substantial evidence standard of review to the Commission's findings of fact. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999).

An injured worker's risk of being deprived a remedy is further reduced by the fact that a claimant is limited to his or her statutory remedy under the Arkansas Workers' Compensation Act only if the claimant has an injury covered by the Act. If the Commission determines that an injury is not covered by the Act, then Circuit Court has jurisdiction to hear a claim in tort seeking compensation for the injury. Automated Conveyor Systems v. Hill, ____ Ark. ____, ____ S.W.3d ____, (04-1256 Op. Del. May 5, 2005).

Finally, to the extent that former ALJ White's affidavit makes reference to "political winds" possibly dictating Full Commission statutory interpretations of Act 796 of 1993, I note that Mr. White's affidavit indicates that he last worked at the Full Commission some 10 years

ago, and as discussed above, the Court of Appeals and the Arkansas Supreme Court conduct de novo reviews of statutory interpretation issues. In the 10 years since Mr. White left the Full Commission, the Arkansas Courts have engaged in numerous statutory interpretations of Act 796, and those statutory interpretations are stare decisis and binding on the Commission in deciding subsequent cases. See, e.g., Nelson v. Timberline Int'l, Inc., 332 Ark. 165, 964 S.W.2d 357 (1998). By its very nature, stare decisis is therefore a fundamental limit on future agency discretion in interpreting the law. See Harold J. Krent and Lindsay DuVall, Accommodating ALJ Decision Making Independence with Institutional Interests of the Administrative Judiciary, 25 J. Nat'l Ass'n Admin. L. Judges 1, 4 (2005).

Against this background of procedural protections already in place reducing the risk of an erroneous deprivation, I conclude that the claimant's post-hearing brief fails to indicate what additional procedural safeguards, or the value of any particular additional safeguard, which the claimant would propose to further reduce the risk of an erroneous deprivation of benefits for an injury covered by the Arkansas Workers' Compensation Act. Consequently, I find that the claimant, who has the burden

of proving the existence and value of any additional safeguards, has failed to meet her burden of proof that additional safeguards exist which would render the present Arkansas Workers Compensation Act unconstitutional.

C. Separation of Powers

To the extent that the claimant may have raised and preserved a legitimate separation of powers challenge to the Arkansas Workers' Compensation Law, I note that the Arkansas Workers' Compensation Law represents a quid pro quo exchange of injured workers' common law tort remedies for statutory "no fault" remedies where the Workers' Compensation Law applies. Craven v. Fulton Sanitation Service, Inc., ___ Ark. ___, ___ S.W.3d ___ (04-791 Op. Del. April 14, 2005).

Elements of the Workers' Compensation Law which insure that the judicial branch does not overreach into the fact finding power of the Workers' Compensation Commission created by the Legislature, and which insures that the Commission does not overreach into the judicial powers of the Arkansas Courts include the following. First, as discussed above, any party aggrieved by a final Commission decision may file a timely appeal to the Arkansas Court of Appeals. Ark. Code Ann. § 11-9-711. The Court of Appeals does not review agency findings of fact de novo, for de novo

review of findings of fact would likely violate separation of powers. Arkansas Comm'n on Pollution Control & Ecology v. Land Developers, Inc., 284 Ark. 179, 680 S.W.2d 909 (1984). However, the Courts can and must perform a de novo review of an agency's statutory interpretations, and the Courts, not an agency, determine the constitutionality of any statute at issue in order to satisfy separation of powers requirements. Teston v. Ark. St. Bd. Of Chiropractic Examiners, ___ Ark. __, ___ S.W2d ___ (04-420 Op. Del. April 7, 2005). Further, the Commission does not have the statutory authority to enforce its own awards. See Ark. Code Ann. § 11-9-712. Similar workers' compensation acts have previously been determined not to violate separation of powers principles under these circumstances. See Dee Enterprises v. Industrial Claim Appeals, 89 P.3d 430 (Colo.App. 2003); McKay v. New Hampshire Compensation Appeals Board, 732 A.2d 1025 (1999). The claimant has failed to present any authority to explain how the Arkansas Workers' Compensation Act might violate Separation of Powers simply because the Commission has statutory authority to make findings of fact and conclusions of law in adjudicated workers' compensation claims.

3. Compensability

To prove the occurrence of 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) that an injury occurred arising out of and in the scope 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) that the injury is established by medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16); and (4) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

A. Alleged Low Back Injuries

In the present claim, Ms. Jorgensen contends that she sustained work-related low back injuries as a result of a fall at work on July 7, 2001 and a second fall in the early Spring of 2002. Ms. Jorgensen testified that she ultimately underwent low back fusion surgery on May 13, 2003 performed by Dr. Briggs in Springfield, Missouri. Ms. Jorgensen acknowledged that she has turned her medical bills in to her group health insurance, and that she has also received disability payments not paid through workers' compensation.

After reviewing the entire record, I find that Ms. Jorgensen has failed to establish by a preponderance of the credible evidence that any of her low back problems since July 7, 2001 are causally related to either the documented incident that occurred at work on July 7, 2001, or related to the undocumented incident that she believes occurred in the Spring of 2002. In reaching this conclusion, I first note that there is no documentary evidence in the record establishing the nature, extent, and findings related to the surgery that Dr. Briggs performed on May 13, 2003. In addition, I note that there are no expert medical opinions in the record to support any causal connection between Ms. Jorgensen's ongoing back problems and any falls that she may have sustained either on July 7, 2001 or in the Spring of 2002. In addition, the medical record is replete with references to back problems which Ms. Jorgensen experienced prior to the incident on July 7, 2001.

In fact, Ms. Jorgensen's candid deposition testimony indicates that even she has never developed a reason to believe that her back problems after July 7, 2001 were caused by the incident on July 7, 2001. In this regard I note that Ms. Jorgensen testified on June 2, 2004:

Q. [D]id that incident in July of 2001 cause any problems for you a month later or two months later or three months later?

A. In 2001? Let's see, that was in July. I don't remember, really.

Q. Okay.

A. I think I was off work for a while.

Q. For that injury?

A. For back, for back pain.

Q. Okay.

A. Later on.

Q. Well, later on being what?

A. I don't exactly remember.

Ms. Jorgensen explained this further on page 19 of her deposition:

Q. Okay. This claim for the injuries in 2001, have they handled that for you the way you wanted it handled? Are you satisfied with what they've done for you?

A. Well, they really didn't do anything.

Q. Okay. Well they sent you to the doctor, didn't they? Didn't you get some medical treatment?

A. No. I saw the doctor, but I, I didn't, I didn't relate it to the workmen's comp. case.

Q. Okay. And why not?

A. Well, I don't know. I just didn't connect the two. I didn't know you had two years to file a workmen's comp. case after date of an incident.

Q. Okay. Well, if you would have known that, would you have done anything differently?

A. Probably not.

Therefore, not only have the doctors failed to render any opinion indicating that Ms. Jorgensen's back problems are causally related to any fall at work, even Ms. Jorgensen's own testimony fails to indicate that she related her own ongoing back problems after July of 2001 to any incident that occurred at work.

In addition, I find that Ms. Jorgensen has failed to establish the existence of any work-related low back injury with medical evidence supported by objective findings. Specifically, I have reviewed the entire medical record presented at the hearing. Those documents fail to contain any objective medical findings indicative of, or even consistent with, any type of acute low back injury sustained in July of 2001 or in the Spring of 2002.

B. Alleged Organic Brain Injury

Dr. Vann Smith, a Ph.D. psychologist in Mountain Home, has opined that Ms. Jorgensen has sustained organic brain injury as a result of falls at work. Dr. Smith acknowledged during his deposition that there is no reference to head trauma in the medical reports. Dr. Smith testified that the

only equipment potentially capable of showing an objective abnormality consistent with his diagnosis of organic brain injury is a "PET scanner", and Dr. Smith indicated that Ms. Jorgensen did not undergo a PET scan in the present case. Instead, Dr. Smith's diagnosis of organic brain injury is based on the history which he was provided by Ms. Jorgensen and based on Dr. Smith's neuropsychological testing.

Dr. Smith's testimony indicates that his neuropsychological test results were based on verbal and written responses that Ms. Jorgensen provided to instructions and other stimuli. Because I find that Ms. Jorgensen's responses came within the voluntary control of the patient, I find that Dr. Smith's neuropsychological test results are not "objective" within the meaning of Ark. Code Ann. § 11-9-102(16)(A)(i). Accord Watson v. Tayco, Inc. (McDonald's), 79 Ark. App 250, 86 S.W.3d 18 (2002). Consequently, I find that Ms. Jorgensen has failed to establish the existence of her diagnosed organic brain injury with medical evidence supported by objective findings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The parties stipulate that the employer-employee-carrier relationship existed at all times pertinent hereto including July 7, 2001.

2. If this claim is found compensable, the claimant's compensation rate for temporary total disability is \$137.00 per week.

3. The claimant has failed to establish that the Arkansas Workers' Compensation Act is unconstitutional.

4. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable back injury. Specifically, the claimant has failed to establish by a preponderance of the evidence that any of her back problems are causally related to any incident at work, and the claimant has failed to establish the existence of her alleged compensable back injury with medical evidence supported by objective findings.

5. The claimant has failed to establish the existence of an organic brain injury with medical evidence supported by objective findings. Specifically, because Dr. Vann Smith's neuropsychological testing results came within the voluntary control of the patient, his neuropsychological

test results are not objective within the meaning of Ark. Code Ann. § 11-9-102(16)(A)(i).

6. Because the claimant has failed to establish the existence of a compensable injury, the respondents are not liable for any temporary disability compensation or medical benefits, and neither party is liable for an attorney's fee to the claimant's attorney.

ORDER

For the reasons discussed herein, I find that the present claim must be, and hereby is, denied.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge