

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NUMBER F506615

VITA T. JESSE, EMPLOYEE

CLAIMANT

**NORTH ARKANSAS REGIONAL MEDICAL
CENTER, EMPLOYER**

RESPONDENT

CROCKETT ADJUSTMENT, CARRIER/TPA

RESPONDENT

OPINION FILED MAY 24, 2006

This contested matter was submitted for an opinion on November 29, 2005 upon the existing record before ADMINISTRATIVE LAW JUDGE D. FRANKLIN AREY, III.

Claimant was represented by Frederick Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondents were represented by John D. Davis, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A prehearing telephone conference was held in this claim on October 4, 2005. A Prehearing Order was filed on that same date. Subsequently, in a letter dated November 14, 2005, Respondents' attorney offered to waive a hearing and submit this case based on Claimant's deposition and certain stipulations. Claimant's attorney agreed to this proposal in a letter dated November 22, 2005. On November 28, 2005, Respondents' attorney notified the Commission of this agreement.

Between the Prehearing Order and the above-referenced correspondence, the parties agreed to four stipulations. The following stipulations are hereby accepted.

1. The employee/self-insured employer relationship existed between the parties on or about May 13, 2005.

2. Claimant's average weekly wage on May 13, 2005 was \$469.92. Claimant's temporary total disability rate is \$313.00 per week. Claimant's permanent partial disability rate is \$235.00 per week.

3. If the claim is found to be compensable, Claimant is entitled to temporary total disability benefits from May 13, 2005 to June 12, 2005 and temporary partial disability benefits from June 13, 2005 to June 19, 2005.

4. Respondents controvert this claim.

The Prehearing Order outlines the issues to be litigated and resolved:

1. Whether Claimant was performing employment services at the time of her alleged injury.

2. If so, whether Claimant sustained a compensable right knee injury on May 13, 2005.

RECORD

In order to specify and complete the record in this matter, based upon the Prehearing Order and the above-referenced correspondence, the following items will be blue-backed and made a part of the Commission's record:

1. The Prehearing Order filed October 4, 2005;
2. Respondents' attorney's November 14, 2005 letter to Claimant's attorney;
3. Claimant's attorney's November 22, 2005 letter to Respondents' attorney;
4. Respondents' attorney's November 28, 2005 letter to the Administrative Law Judge; and
5. The deposition of Vita Jesse, Claimant, taken September 19, 2005.

DISCUSSION

Although Claimant was scheduled to begin work at 11:00 o'clock in the morning on May 13, 2005, the Respondent employer called her to work early that day. She parked her car on the employer's parking lot, spotted a fellow employee that she wished to speak with, and began to walk in that employee's direction.

I was parked right next to the grassy area that led to the sidewalk and I saw Mary Pladger when I got out of my car and she's the one that does the CPR for the hospital and I'm a CPR instructor, so I approached her to see if there were any classes that she needed me to teach, and as I started across the grassy area I stepped into a hole and fell.

Before she fell, Claimant and the other employee exchanged greetings; they did not discuss any business.

Q. All right. Now, Mary wasn't your supervisor, was she?

A. No.

Q. And did you and Mary work in the same department?

A. No.

Q. And you and Mary had not planned to meet in the parking lot that morning to discuss anything, had you?

A. No, we hadn't.

Q. And I take it you hadn't swiped in at the time you saw her.

A. No, I hadn't.

As indicated by the last question, Claimant was not on the clock at the time of her injury.

Although the first issue involves the question of employment services, it is not necessary to address that issue in order to dispose of this case. There is no medical evidence in the record, much less objective findings in support of such medical evidence.

The parties did not stipulate to the existence of medical evidence or objective findings.

To be compensable, an injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). “Objective findings” are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i). As one of the elements required to prove a compensable injury, Claimant must sustain her burden of proving objective findings by a preponderance of the evidence. See Ark. Code Ann. § 11-9-102(4)(E)(i); see also Mays v. Alumnitec, Inc., 76 Ark. App. 274, 278-79, 64 S.W.3d 772, ___ (2001) (finding that a claimant failed to prove a compensable injury by a preponderance of the evidence “because the abstract is devoid of any objective findings”). “Preponderance of the evidence” means evidence of greater convincing force; the term does not mean preponderance in amount, but implies an overbalancing in weight. Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 496-97, 206 S.W.2d 442, ___ (1947).

The Full Commission has expounded upon the requirement that an injury must be established by medical evidence supported by objective findings. In one claim, the Commission noted:

[W]e find that the claimant failed to establish an injury with medical evidence supported by objective findings.... There is simply no medical evidence in the record establishing the claimant’s injury. Accordingly, the medical evidence, or lack thereof, is not sufficient to satisfy the requirements of the Arkansas Workers’ Compensation law....

....

The parties did not stipulate that if medical records were introduced, there would be medical evidence establishing the injury by objective and measurable findings; nor were any medical records introduced to meet this requirement. Accordingly, we find that the claimant has failed to meet his burden of proof.

Cooper v. Bill Wingo Masonry Co., Full Workers' Compensation Commission Opinion filed March 6, 1997 (E513144). On another occasion, the Commission remarked: "We have consistently held that when a claimant fails to submit medical evidence supported by objective findings substantiating an alleged injury, that the claimant has failed to meet his burden of proof." Daniel v. A & C Services, Full Workers' Compensation Commission Opinion filed April 21, 1998 (E613672).

I find that Claimant has not sustained her burden of proving a compensable injury by a preponderance of the evidence. Specifically, the record does not contain any medical evidence supported by objective findings. Thus, even if Claimant prevailed on the question of employment services, she can not meet her burden of proving a compensable injury by a preponderance of the evidence.

_____ **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The stipulations agreed upon by the parties are reasonable and are approved.
2. The employee/self-insured employer relationship existed between the parties on or about May 13, 2005.
3. Claimant's average weekly wage on May 13, 2005 was \$469.92. Claimant's temporary total disability rate is \$313.00 per week. Claimant's permanent partial disability rate is \$235.00 per week.
4. If the claim is found to be compensable, Claimant is entitled to temporary total disability benefits from May 13, 2005 to June 12, 2005 and temporary partial disability benefits from June 13, 2005 to June 19, 2005.
5. Respondents controvert this claim.
- _____6. Claimant did not sustain her burden of proving by a preponderance of the

evidence that she suffered a compensable right knee injury on May 13, 2005, because the record does not contain any medical evidence supported by objective findings as required by Ark. Code Ann. § 11-9-102(4)(D).

7. Because Claimant failed to prove a compensable injury, it is not necessary to discuss the other issue in this case.

ORDER

Claimant failed to sustain her burden of proving that she suffered a compensable injury. Therefore, the above claim is denied and dismissed.

IT IS SO ORDERED.

D. FRANKLIN AREY, III
Administrative Law Judge

DFA/ml