

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F708146

WALLACE PEDERSON, EMPLOYEE

CLAIMANT

IC CORPORATION, SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED JUNE 13, 2008

Hearing before Administrative Law Judge O. Milton Fine II on March 19, 2008 in Conway, Faulkner County, Arkansas.

Claimant *pro se*.

Respondent represented by Mr. John D. Davis, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 19, 2008, the above-captioned claim was heard in Conway, Arkansas. A pre-hearing conference took place on December 10, 2007. A prehearing order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

Stipulations

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit 1. With an additional stipulation reached at the hearing, they are the following, which I accept:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/self-insured employer relationship existed between the parties at all relevant times.

3. Claimant's payroll records have been provided.
4. The claim has been controverted in its entirety.
5. Claimant's average weekly wage was \$599.05.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1.

They are the following:

1. Whether Claimant sustained a compensable injury on or about June 28, 2007.
2. Whether Claimant is entitled to reasonable and necessary medical treatment.
3. Whether Claimant is entitled to temporary total disability benefits from August 20, 2007 through October 18, 2007.
4. Whether Respondent is entitled to an offset for any short-term disability benefits paid.

Contentions

Claimant:

1. Claimant contends that he sustained a compensable injury on or about June 28, 2007 and is entitled to temporary total disability benefits and reasonable and necessary medical treatment.

Respondent:

1. Respondent contends that Claimant did not sustain a compensable injury on or about June 28, 2007.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including 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, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2002):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has not proven by a preponderance of the evidence that he sustained a compensable injury on June 28, 2007 because he has not proven that the injury arose out of and in the course of his employment.
4. The other issues are moot in light of the above finding.

CASE IN CHIEF

Summary of Evidence

The witnesses at the hearing were Claimant; Shirley Ann Pederson, his wife; and Renee Turner, Health and Safety Coordinator for Respondent IC Corp. In addition to the prehearing order discussed above, also admitted into evidence in this case were Respondent's Exhibit 1, a compilation of Claimant's medical records, consisting of two index pages and 34 numbered pages thereafter; and Respondent's Exhibit 2, a compilation of non-medical documents including a Form AR-N, Claimant's payroll records, IC's health

and safety manual, and a verification form for the manual, consisting of one index page and nine numbered pages thereafter.

Testimony

William Pederson. Under questioning from me, Claimant testified that he is 62 years old. He went to work for Respondent IC, which manufactures school buses, in March 2007. He is employed as a welder of seat frames. The seats are standard school-bus size, with two sets of legs in an inverted "U" shape. The legs are made of one-inch square steel tubing, and are 18 inches apart at the open end. Claimant welds square plates onto the legs to form feet, roughly two inches by three to four inches, which are bolted to the bus floor.

He stated that he was injured on June 28, 2007 while working at IC. He described the incident as follows:

You—when I weld the four feet or washer like things on the bottom, I pick them up and I move them to the next station, who does other welding to them, who does other stuff and then it moves on. And I just—I had finished welding the set that I was working on and turned to move. And I felt a pop, sort of, in my back. I described it as—like a rubber band snap.

Claimant described a "set" as comprised of two of the "U"-shaped legs with the feet attached. He was unsure of their weight, but stated that they were "very heavy." At the time he felt the "pop," he was standing and twisting to the right away from his work table, or welding "jig," which stands waist-high (Claimant is five feet nine inches tall), to place the completed legs, one set in each hand, onto a rack so that he could put the next legs into the jig. He stated that he felt the "little pop," or "twinge" on his upper back just below his left shoulder blade. Claimant felt no numbness and no pain elsewhere.

Claimant testified that he did not report the incident when it occurred, but instead kept on working. No one witnessed the event. When he arrived home that evening, he felt a small amount of soreness in his back after he showered. He stated that he had not done any unusual lifting or twisting between the time he felt the “pop” and when he began to feel the pain. By the end of the next day, the soreness was slightly worse, so he took an over-the-counter oral and topical pain medication. However, this self-treatment did not help, and his condition, according to Claimant, became “progressively worse.” During this period, he was able to work and continued to work.

He testified that he ultimately reported what occurred to James Caen, his supervisor, and was sent to Dr. Long. Caen did not ask him why he needed treatment, and Claimant did not tell him. Claimant stated that he did not think that Caen was even aware that he was injured. While Claimant stated that it was not until three to four weeks after the incident that he saw Dr. Long, the company doctor, he added that he did not fill out a Form AR-N (part of Respondent’s Exhibit 2) until three or four days after the doctor’s visit. The form reflects that Claimant informed Respondent IC of the incident at issue on July 8, 2007, and signed the form on August 9, 2007. However, Claimant stated that he did not notify IC of the incident until after he saw the doctor, which would thus have been around August 4 or 5 of 2007.

With respect to his treatment, Claimant testified that Dr. Long gave him one pill. He did not write Claimant a prescription, rendered no other treatment, and did not modify his duty status. Thereafter, Claimant saw Dr. Herrington, who practices with Dr. Michael Berry, his personal physician. Dr. Herrington gave him a prescription for pain medication. A few days later, he saw Dr. Berry.

Claimant stated that the only treatment he has received for his back was medication and therapy. He later clarified that Dr. Berry also gave him an injection of some type in his back. Dr. Berry wrote the therapy prescription, and it was carried out by Respondent IC's company therapist. The therapist gave him stretching exercises, which he has been performing at home. Claimant was aware that Dr. Berry had a diagnostic procedure on Claimant's back performed, but Claimant did not know if it was an MRI or something else. He has had no surgery on his back. Claimant testified that the records in Respondent's Exhibit 1 reflect all of the care he has received for his back.

Except for his visit with Dr. Long, all of Claimant's care has been paid for through his private health insurance through Respondent IC. Claimant has paid the co-pays.

Regarding the temporary total disability benefits he is seeking, Claimant testified that he stopped working approximately August 20, 2007, and has not returned. Dr. Berry wrote a note to place him on light duty. Claimant took the note to Respondent IC, but was told that they could not accommodate the restriction unless he was "under workman's [sic] comp." Someone at the company recommended that he apply for short-term disability benefits. He did so, but has now exhausted his benefits. Claimant stated that he still works for IC, and was due to return to work there on March 31, 2008. While he has been laid off, he is supposed to contact them about his "bumping rights." Claimant stated Dr. Berry has released him, but has not yet put it into writing.

Asked about his present condition, Claimant testified that his back is "[a] thousand percent better than what it was." He is no longer feeling any pain, and has no numbness. The therapy and medication helped him.

When questioned by Respondent, Claimant stated that he was aware that he was supposed to report any on-the-job injury to his supervisor, James Caen, immediately. He saw Caen every day he was at work. He admitted that he had no witnesses to corroborate that he was injured or that he complained of pain at work. While the records of his visit to Dr. Herrington reflect that as of August 3, 2007, he had been having trouble in his legs and back for three months, that did not relate to his alleged on-the-job injury. Claimant added that he has not filed for unemployment.

Shirley Ann Pederson. Under questioning from me, Pederson stated that she is married to Claimant. She testified that he came home the night of the incident and told her that he had felt a twinge in his back, but that he was doing okay. He took some over-the-counter pain medication and went to sleep. She stated that Claimant thought "it was just a simple thing that was going to be over with." However, his pain increased over the next few days, and she and Claimant tried to treat it with stronger pain pills and pain patches. When it got to the point where Claimant could not deal with the pain, after a couple of weeks, he went to the company doctor. She did not attend the appointment with him.

Mrs. Pederson testified that around the time he went to the company doctor, Claimant was at the point where he could hardly walk. The therapy treatments hurt him as well. She did accompany him to their family physician. He prescribed therapy, gave Claimant a steroid injection in the affected area, and provided muscle relaxers and pain pills.

At a certain point, Claimant was unable to go to work because halfway through his work day he was unable to move. He was barely able to walk. At present, however, Claimant is doing much better. She stated that Claimant has had previous back injuries,

but they were in a different location and were not to this extent. The low back condition occurred in 2005 or 2006 and resolved when Claimant switched to a different type of harness.

Renee Turner. Called by Respondent, Turner testified that she has been employed at Respondent IC for nine years. She is the Health and Safety Coordinator. In this position, she is the training facilitator, administers the short-term disability program, and helps to administer the workers' compensation system. She is located in the on-site safety and health office at IC. In August and September 2007, Dr. Long actually worked on-site at the plant. He treated ailments regardless of whether they were work-related.

Turner stated that she is involved in new employee orientation. This takes place on the first day of employment. She is the one who conducted Claimant's orientation. As part of that training, she goes over how injuries are to be reported. She identified page four of Respondent's Exhibit 2 as being part of the Health and Safety Manual at Respondent IC. The manual is given to new employees at orientation. Page nine of the exhibit reflects that Claimant signed for his manual during orientation. The fifth page shows how to report injuries during and after normal business hours. This is something discussed specifically during orientation. Pages seven and eight detail the company's workers' compensation program.

Under questioning from me, Turner stated that either she or Christy Hogan, the nurse practitioner, would have coordinated treatment with Dr. Long during the period covered by this claim. She explained that an employee wishing to see Long called the clinic and made an appointment. If it was an emergency, they could simply come and be seen immediately.

While the on-site clinic gives priority to occupational injuries, non-work-related injuries can be treated as well. Appointments by employees are coordinated through their supervisors. Because of HIPAA, supervisors are not allowed to inquire into the nature of the health complaint. However, once an employee contacts the clinic, Turner states that she tries to glean whether or not the injury is job-related for priority purposes or whether it is an emergency. Employees are instructed to come straight to the clinic if they are injured; but they are to tell their supervisor if he or she is in the area. The clinic also has a physical therapist, and can perform therapy prescribed by a physician.

Records-Medical

The medical records of Claimant that were introduced at the hearing and are part of Respondent's Exhibit 1 reflect the following:

Pre-injury. Claimant presented to Dr. Michael Berry on September 21, 2006 with a persistent burning right leg pain that comes from his right lower back. Being on his feet at work aggravates it. Dr. Berry suspected lumbar radiculopathy and noted, "Check nerve conduction velocity test of the right leg." However, the records do not reflect that such a test took place.

On May 14, 2007, Claimant went to the clinic at Respondent IC and complained of "pain into back sudden onset 30 min PTA." He reported that he was lifting seats and had an onset with nausea that lasted 20 to 30 minutes. The clinic administered an EKG, which was found to be normal. He was referred to the emergency room.

Post-injury. On August 3, 2007, Claimant presented to Dr. Herrington with "pain in legs and back x3 mos." He stated that he started a new welding job when something

popped in his back, causing numb and weak legs. He placed Claimant on Mobic, and recommended an MRI and physical therapy.

Claimant on August 8, 2007 went to the company clinic and reported mid-back pain that he had for five to six weeks, with no known injury. He stated that he was lifting seat frames and twisting when he had an onset of thoracic back pain "after feeling a catch or twinge in back while lifting seat frames out of jig." After trying to "tough it out," the pain became severe enough that he went to his family doctor on August 3, 2007. The pain was marginally increasing. He reported that he [w]elds in a stooped position." The clinic notes reflect that he had "[t]ender [illegible] tight [illegible] muscles and bilateral latissimus neck and lumbar muscles [illegible]." He was assessed as having a thoracic muscle strain, primarily in the latissimus dorsi and longissimus thoracis and was returned to work. The note reflects that Claimant was have a physical therapy consultation, and a job review concerning the height of the tables.

The next day, he returned to the clinic and reported that his back had not improved. Claimant stated that he had no pain with supported sitting, but pain with lifting an object at chest level in front of him. He described his pain as 4/10, but 10/10 at the end of the workday.

Claimant went to Dr. Berry on August 17, 2007 and stated that his back pain was slowly worsening. He reported that there is no pain if sitting; but it returns if he stands. He stated that the "shooting pain takes his breath." His right leg had a burning sensation that comes and goes. Berry detected a spasm at T-9 on the left. He assessed Claimant as having thoracic back pain that is "definitely work related" and prescribed Flexoril and

Percocet. He took Claimant off work until August 24, 2007, stated that he should continue physical therapy at work, and discontinued the Mobic.

On August 21, 2007, Claimant underwent an MRI of the thoracic spine. It was found to be negative.

Dr. Berry on August 29, 2007 wrote that Claimant "has a work related strain to his thoracic back" and "needs to be put on light duty." On September 5, 2007, he returned to Dr. Berry. He presented with a burning sensation in his mid-back on the left at T8-10. A spasm/knot was felt at T-10 in the left erector spinae paraspinals. Dr. Berry gave Claimant a steroid injection into this muscle.

On September 5, 2007, Dr. Berry filled out an IC Attending Physician's Statement. It reflects that he diagnosed Claimant as having a thoracic spine and back muscle strain, with objective findings of "muscle spasm tenderness at T10 level on left." He stated that Claimant was being treated with muscle relaxers, pain medication and a steroid injection, and that he should be kept off work until October 5, 2007.

Claimant returned to Dr. Berry on October 4, 2007 and stated that while the shot gave him several days of relief, he still had a burning sensation in his back that he rated as 2/10 and increased with activity. Dr. Berry agreed that Claimant should be kept off work for 30 more days, and recommended that he find a job with lighter duty. He wrote a prescription for physical therapy for four weeks at three times per week. On October 16, 2007, Dr. Berry wrote the following:

To Whom It May Concern:

Mr. Pederson is currently a patient of mine. He was last seen in my office on 10/04/2007. He was first seen on 08/03/07 for leg and back pain which started after feeling something pop in his back while welding at his new job.

He was seen again on 08/17/07 with persistent thoracic back pain which I felt was clearly from a job related injury. I ordered an MRI of this thoracic spine, which was done on 08/21/2007.

My diagnosis is thoracic spine sprain (diagnosis code 847.1) involving erector spinae muscles and back muscle spasm (diagnosis code 724.8). He has received a steroid injection into his left erector spinae muscle on 09/05/2007, muscle relaxers, pain relievers, physical therapy through his employer and time off work. He has made slow but steady progress but still requires more time off work and more physical therapy to heal.

Claimant returned to Dr. Berry on November 7, 2007 and rated his pain at 1-2/10 most days. He stated that his pain increases temporarily after physical therapy. Berry assessed him as making slow improvement and recommended that he stay off work until December 13, 2007. He reported no pain to Dr. Berry on December 17, 2007, and stated that his physical therapy was finished. Berry continued him off work (since IC reported that light duty work was not available), and instructed him to continue his home exercises. When Claimant on January 14, 2008 reported that he goes without pain as long as he does not engage in activity and that he does not feel he can perform his welding job, Dr. Berry continued him off work and advised him to change jobs.

On February 12, 2008, Claimant underwent an independent medical evaluation by Dr. Kenneth Rosenzweig. The report reflects the alleged date of injury as August 9, 2007. Claimant related that he is no longer on medication, is able to perform activities of daily living, and that despite his concern about re-injury, is able to go back to work. He was at his current job for approximately 90 days when the injury occurred. Dr. Rosenzweig diagnosed him with a thoracic spine strain versus posterior shoulder girdle strain in the area of the rhomboid. He noted that Claimant's presentation of tenderness was more muscular, consistent with a myofascial strain. Based upon his evaluation, Dr. Berry adjudged

Claimant to be “likely at MMI” with no entitlement to an impairment rating. He opined that based upon Claimant’s being off work for an extended period of time for “what appears to be a mild sprain strain, there appears to be no contraindication for him to return to work at regular duty.” He further stated that a functional capacity evaluation could be used to delve more deeply into Claimant’s subjective complaints.

Claimant returned to Dr. Berry on February 14, 2008 and was continued off work.

Records-Non-medical

The non-medical records of Claimant that were introduced at the hearing and are part of Respondent’s Exhibit 2 reflect the following:

Claimant’s signature appears on a Form AR-N dated August 9, 2007. Therein, he wrote that he injured his back while in the seat frame area of Respondent IC “5-6 wks ago” and notified the employer about it on July 8, 2007 at 1:45 p.m. The alleged cause of the injury was “pick[ing] up [a] seat leg to move them [sic] and had a pain in my back.”

An Earnings Verification spreadsheet for Claimant reflects that the last time he drew a paycheck from Respondent IC was August 23, 2007.

The balance of Respondent’s Exhibit 2 is comprised of IC’s Health and Safety Manual. It provides that if a worker suffers an injury at IC during normal working hours, he or she should contact the Team Leader, and the two of them will decide if a visit to the Health and Safety Department is necessary. The section provides in pertinent part:

1. No matter how slight, all work-related injuries shall be reported to your Team Leader and Health and Safety **immediately**.
2. If an injury requires treatment by a physician, a physician designated by the company will be used. At **no time** should you go to your personal doctor for a work-related injury.

4. Employees are required to complete an accident report and Form N (Employee's Notice of Injury Form).

(Emphasis in original) Claimant on April 16, 2007 signed a form that verified that he received a copy of the manual.

ADJUDICATION

A. Compensability

Claimant has alleged that he incurred a compensable injury to his back on January 28, 2007. Respondent asserts that no compensable injury occurred.

Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2002), which the I find applies to the analysis of Claimant's alleged injury, defines "compensable injury":

(i) An accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2002). "Objective findings" are those findings that cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16). The element "arising out of . . . [the] employment" relates to the causal connection between the claimant's injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant's employment "when a causal connection between work conditions and the injury is apparent to the rational mind." *Id.* A causal relationship may be established between an employment-related incident and a subsequent physical injury based on the evidence that the injury manifested itself within a reasonable period of time following the incident, so that the injury is logically attributable

to the incident, where there is no other reasonable explanation for the injury. *Hall v. Pittman Construction Co.*, 234 Ark. 104, 357 S.W.2d 263 (1962).

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). This standard means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003)(citing *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947)).

The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, 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 that it deems worthy of belief. *Id.*

The medical evidence, supported by objective findings, shows that Claimant suffered a muscle spasm in his back. On August 17, 2007, Dr. Michael Berry in examining Claimant detected a spasm at T-9 on the left. A spasm/knot was felt at T-10 in the left erector spinae paraspinals on September 5, 2007. A report of spasm constitutes an objective medical finding. *Continental Express, Inc. v. Freeman*, 339 Ark. 142, 4 S.W.3d 124 (1999).

The medical records also reflect that Claimant was prescribed Flexeril. In *Fred's, Inc. v. Jefferson*, the Arkansas Supreme Court affirmed a Commission finding that there were objective findings to prove the claimant's injury. 361 Ark. 258, 206 S.W.3d 238 (2005).

There, the claimant when presenting for medical treatment complained of muscle spasms in her back. The records reflected that she was thereafter prescribed Flexeril, among other things. In holding that the providing of the prescription was itself objective medical evidence, the court held that “a reasonable inference from the chronology of events is that the medication and physical therapy were prescribed to aid [claimant] and to treat her injury. Any other construction of these events does not withstand scrutiny or pass the test of reasonableness.” *Id.*

That, however, leaves the question of, *inter alia*, whether this injury arose out of and in the course of his employment at Respondent IC. Claimant testified that the incident occurred on June 28, 2007 while he was at his work station, welding bases, or feet, to seat frame legs. He stated that he was carrying a set of these—U-shaped, made of steel tubing, and allegedly heavy in each hand, placing them on the rack so that he could begin work on the next set. In moving them, he made a twisting motion and felt a “pop”—which he compared to the snapping of a rubber band.

Claimant admits that no one witnessed the event. Moreover, he did not report the alleged occurrence to his superior, despite the fact that his failure to inform James Caen was a clear-cut violation of Respondent IC’s health and safety policy, as set forth in the manual in evidence. Claimant was aware of this policy and saw Caen every day at work. According to Claimant, he went home and treated his discomfort with over-the-counter and topical pain medication. He testified that he ultimately reported the injury and was sent to Dr. Long at the on-site clinic. According to his Respondent’s Exhibit 1 (which Claimant testified was complete), this visit took place on August 8, 2007. This was 41 days after the alleged event. He first treated, on August 3, 2007, with a doctor of his own

choosing—another violation of company policy—36 days after the alleged injury. While he stated in the Form AR-N that he reported the injury to his employer on July 8, 2007, 10 days after the alleged incident, nothing before me corroborates this. While the form reflects that Claimant informed Respondent IC of the incident at issue on July 8, 2007, and signed the form on August 9, 2007, Claimant testified that he did not notify IC of the incident until after he saw the doctor, which would thus have been around August 4 or 5 of 2007. I also note that August 3, 2007 visit to Dr. Herrington, Claimant stated that he has had pain in his legs and back for three months. This would predate the alleged on-the-job injury by nearly two months. Finally, Claimant did not present with objective findings of back spasm until his visit to Dr. Berry on August 17, 2007—two weeks after he first sought treatment.

I recognize that Dr. Berry on October 16, 2007 opined that Claimant's injury was a work-related injury. In *Cooper v. Textron*, 2005 AWCC 31, Claim No. F213354 (Full Commission Opinion filed February 14, 2005), the Commission addressed the standard when examination medical opinions concerning causation:

Medical evidence is not ordinarily required to prove causation, i.e., a connection between an injury and the claimant's employment, *Wal-Mart v. Van Wagner*, 337 Ark. 443, 990 S.W.2d 522 (1999), but if a medical opinion is offered on causation, the opinion must be stated within a reasonable degree of medical certainty. This medical opinion must do more than state that the causal relationship between the work and the injury is a possibility. Doctors' medical opinions need not be absolute. The Supreme Court has never required that a doctor be absolute in an opinion or that the magic words "within a reasonable degree of medical certainty" even be used by the doctor; rather, the Supreme Court has simply held that the medical opinion be more than speculation; if the doctor renders an opinion about causation with language that goes beyond possibilities and establishes that work was the reasonable cause of the injury, this evidence should pass muster. See, *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001). However, where the only evidence of a causal connection is a speculative and indefinite medical opinion, it is insufficient to meet the claimant's burden of proving causation. *Crudup v. Regal Ware, Inc.*, 341, Ark. 804, 20 S.W.3d 900 (2000); *KII Construction Company v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002).

However, based on the circumstances outlined above, I do not accept this finding. Claimant –the only person with first-hand knowledge of what happened–did not treat this for at least 36 days as a job-related injury, and reported to Dr. Berry’s clinic that his back pain predated the alleged injury date by two months. No objective findings were present during the first doctor visits.

The injury cannot be tied to the alleged June 28, 2007 incident without resorting to speculation and conjecture, which I am not permitted to do. Speculation and conjecture cannot serve as a substitute for proof. *Dena Construction Co. v. Hemdon*, 264 Ark. 791, 796, 575 S.W.2d 155 (1979). Hence, Claimant has not proven by a preponderance of the evidence that his shoulder injury occurred as a result of his work for Respondent employer.

B. Balance of Issues

Because of the above finding, the other issues litigated at the hearing– whether Claimant is entitled to reasonable and necessary medical treatment and temporary total disability benefits, and whether Respondent is entitled to an offset–are moot and will not be addressed.

CONCLUSION

Claimant bears the burden of proving by a preponderance of the evidence that his wrist sprain is compensable. He did not succeed in doing this. Therefore, his claim must be, and hereby is, denied and dismissed.

IT IS SO ORDERED.

Hon. O. Milton Fine II
Administrative Law Judge