

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F203323

KENYA BAKER,
EMPLOYEE

CLAIMANT

WEST FRASER SOUTH, INC.,
EMPLOYER

RESPONDENT

AMERICAN MANUFACTURERS MUTUAL,
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 5, 2003

Upon review before the FULL COMMISSION in Little Rock,
Pulaski County, Arkansas.

Claimant represented by HONORABLE BILLY J. HUBBELL, Attorney
at Law, Crossett, Arkansas.

Respondents represented by HONORABLE DAVID C. JONES,
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed in part
and reversed in part.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed August 28, 2002. The administrative law judge
found, "On February 5, 2002, the claimant sustained injuries
to her neck, left shoulder, left hip, left thigh and right
ankle arising out of and in the course of her employment.
The accidental injury also resulted in complications
relative to her (sic) claimant's pregnancy which required
medical treatment and culminated in the loss of the fetus."
The administrative law judge found that the claimant was
entitled to temporary total disability compensation from

February 10, 2002 through April 29, 2002. After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's finding that the claimant sustained compensable injuries on February 5, 2002, and that the claimant was entitled to temporary total disability compensation from February 10, 2002 through April 29, 2002. We reverse the administrative law judge's finding that the February 5, 2002 accidental injury resulted in complications which culminated in the loss of the fetus. The Full Commission therefore affirms in part and reverses in part the opinion of the administrative law judge.

I. HISTORY

Kenya (Baker) Thompson, age 29, testified that she became employed with West Fraser (South), Inc. in May 1999. Ms. Thompson testified that she was an electrical technician for the respondent-employer. The claimant agreed that she had been taken off work from January 4-15, 2002 for problems related to a pregnancy. The claimant testified that she had been "tired." A note from an Antepartum Record dated January 22, 2002 indicated, among other things, that the claimant complained of "2 episodes of spotting since last visit 1-2-02." The handwritten notes from a pelvic exam on

that date appeared to show no bleeding or cervical lesions, and "cervix closed."

The parties stipulated that the claimant sustained a compensable injury on or about February 5, 2002. The claimant testified that she leaned forward in the course of her employment and fell through a hole:

Q. How far did you actually fall?

A. Between six and eight feet....

Q. You fell through the hole, fell six to eight feet?

A. Hit a cable rack....

Q. That's what you fell onto?

A. I hit that with my left thigh, I hit the corner of that with my left thigh[.]

Q. Other than your leg, did you suffer any other injuries that you noticed at that time?

A. My shoulder. Well, I just totally stretched all of this out, and it was hurting.
(Indicating.)

Q. "All of this" referring to what?

A. My left side from my neck to my hip or down below on my muscles through here, and my shoulder down here to my elbow pretty much was hurting, aching, immediately afterwards because it was just a jar and then I had to actually pull myself up or I would have went down to the first floor.
(Indicating.) ...

Q. After the fall, you had some spotting of blood?

A. Just one time when I went to the bathroom to check my thigh, my panties had just a little spot of blood in it and I didn't think that I had ruptured anything at that time....

Q. That was a vaginal discharge that occurred the night after you fell?

A. Uh-huh (yes).

It was noted by a medical provider on February 11, 2002 that, two weeks earlier, the claimant had fallen eight feet at work and had landed on the left side of her body. The claimant complained of some lower pelvic pain, lower back pain, and "pinkish d/c onset last P.M." The claimant also complained of "achiness all over since fall." It was noted that an ultrasound showed "good cardiac act." without "evidence of abruption." There was also an "Adequate amt. of amniotic fluid." The claimant testified, "I went home and put my feet up above my heart and my stomach the way Dr. Coffman told me to do." The claimant testified that the respondent-employer did not provide light work duty.

The claimant presented to Larry D. Ezell on February 12, 2002:

Comes in stating that she is approximately 3 months pregnant. She fell while working at the lumber mill in Huttig on 02/05/02. She states she slipped and fell into a hole. She hurt her neck, left hip and right ankle. She is seeing an OB/Gyn in Monroe and he recommended that she be placed on light duty. She states that she had an amniotic

fluid leak and pink vaginal bleeding. He placed her at restrictions of no climbing and no heavy lifting. Her employer does not have a job position available and the \$123 a week insurance that she would draw by not working is not enough for her to survive....

There is a large resolving hematoma and contusion on the left lateral thigh. She is tender to palpation of the dorsum of the right foot.

Dr. Ezell assessed "Intrauterine pregnancy with cervical strain and contusion to the left thigh....I told her that she should return to her OB/Gyn to see if he is willing to give her a full release to return to work without restriction or return to her employer and see if they can work out an arrangement for her to have some type of employment with restricted lifting and climbing."

The claimant was admitted to Glenwood Regional Medical Center, West Monroe, Louisiana, on February 15, 2002, with the complaint of "Bleeding with passage of tissue in pregnancy." Dr. Leslie R. Coffman noted, "Pelvic ultrasound reveals that the uterus is normal in size for gestational age and the uterus contains a viable fetus. The fetus is appropriate for gestational age and there is normal fetal morphology and normal fetal movement. The placenta appears to be normal. The cervix is closed. There is no active vaginal bleeding at the present time. The patient has been

told to remain at bed rest and to avoid heavy lifting, strenuous activity or sexual intercourse. Her possibilities of an incompetent cervix, which is not visible at this time, has been discussed with the patient. If this occurs we will perhaps perform cervical cerclage." There was no reference to the workplace injury.

The claimant again complained of vaginal bleeding on February 18, 2002. An ultrasound showed good fetal movement, adequate amount of amniotic fluid, placenta intact. The record indicates that a "cervical encirclage" was scheduled for February 21, 2002, but this surgical procedure was not carried out. The claimant testified that she understood the "cerclage" to be, "when they sew the end of your uterus up....I didn't want the baby to die inside of me and have to have that cerclage undone just to get the baby out, and I didn't want to have the baby that had been damaged by that fall."

The claimant was again examined at Glenwood Regional on February 22, 2002. Dr. Coffman reported:

This patient is in the second trimester of pregnancy and has been followed in the office for repetitive episodes of vaginal bleeding. The cervix has always been closed and the fetus has been essentially normal with good fetal heart activity and good fetal movement and normal amounts of amniotic fluid. The placenta has

generally been evaluated as normal. This has been discussed with the patient. Also, the problem of bleeding in pregnancy has been discussed with the patient including possible outcomes. Although this patient has no cervical dilatation, the possibility of placing a cervical and cerclage suture in the cervix has been discussed with the patient including its limitations and the fact that it is not clearly indicated in the absence of cervical dilatation. The patient has elected not to have this procedure performed. The patient is again admitted to the hospital complaining of vaginal bleeding. A pelvic ultrasound reveals the uterus to be essentially normal in appearance for its gestational age with a viable infant with normal fetal heart activity and normal amniotic fluid. There is perhaps a small area of abruption surrounding a portion of the placenta but this is an equivocal finding and may or may not be significant and no intervention is possible in order to correct this. The patient has previously been advised to refrain from work and remain essentially at bed rest with bathroom privileges. The patient desires to be discharged today following her ultrasound and will be followed on an outpatient basis or is to return sooner should any problems develop such as extremely heavy bleeding, passage of tissue, pain or any other problems which concern her....

FINAL DIAGNOSES: Second trimester vaginal bleeding, plus possible placental abruption....The patient had no evidence of fetal demise and the fetus is indeed viable and active at the time of ultrasound. The nature of the problem has been discussed thoroughly with the patient including possible outcomes and the possibility of miscarriage and therapeutic alternatives have been discussed with the patient. She is discharged in stable condition....

NOTE: This patient is requesting that a D&C be performed to terminate this pregnancy. This request has been denied.

The claimant denied at hearing that she wanted to "get rid of the baby." "I was trying to save the baby," she testified.

There was no mention on February 22, 2002 of the claimant's workplace injury.

Dr. Ezell dictated the following on February 26, 2002:

Comes in for a second opinion. She has been seeing Dr. Leslie Coffman in Monroe who is an OB/GYN....Dr. Coffman has recommended placing cerclage in the cervix or has also suggested that she go to one of the abortion clinics since he believes that loss of the baby is imminent. She does not wish to proceed with abortion unless her health is in jeopardy. She feels as though her vaginal bleeding may be placing her life in jeopardy....

I told the patient and her friend that I do not do OB any longer. However due to my previous experience with obstetrics that she would be considered at high risk of abortion. I recommended that she return to Dr. Coffman for placement of cerclage with the understanding that she may spontaneously abort even with cerclage. She is also advised that she needs to be at bedrest with feet elevated on pillows and remaining essentially horizontal the majority of the time. I could not give her pain medications, muscle relaxants or non-steroidals for her cervical whiplash and left shoulder strain. I did write a note stating that I felt that she had suffered at least whiplash injury and left shoulder strain with the fall in addition to possibly causing spontaneous miscarriage. I told her that she should at least consider the option of going to the abortion clinic. However the baby is now approximately 15 weeks gestation and a suction evacuation would have to be completed....

Dr. Ezell assessed "Threatened OB."

The claimant reported on February 27, 2002 that she felt much better, that she was "only having vag. spotting when she moves around a lot."

On March 12, 2002, the claimant complained of bilateral hip and bilateral lower extremity pain, "onset last P.M." The claimant also complained of "heavy bleeding which started last p.m." An examination of the claimant's hips indicated, "no evidence of trauma." A nurse also noted, "no obvious placental abruption seen." The claimant reported to a nurse on March 13, 2002 that her "pelvic pressure" had stopped, but the claimant continued to have leg and back pain.

The claimant was admitted to Baptist Health Medical Center on March 14, 2002, on which date ultrasound findings indicated:

Real-time ultrasound reveals a singleton fetus in a vertex presentation. The measurements of the fetus are consistent with 17.1 weeks size and with an estimated weight of 209 grams. There is minimal amniotic fluid surrounding the fetus. Anatomic survey does not reveal any obvious abnormalities. Fetal heart demonstrates a tachycardia of 175 beats per minute. The fetus is seen to move well. There is minimal amniotic fluid volume surrounding the fetus. The placenta is located in the fundal portion of the uterus.

Dr. Stephen M. Chatelain recommended, "I believe that delivery is indicated due to the chorioamnionitis."

(Dorland's Illustrated Medical Dictionary, 28th Ed., defines "chorioamnionitis" as "inflammation of the chorion and amnion." "Chorion" is defined as "the cellular, outermost extraembryonic membrane, composed of trophoblast lined with mesoderm; it develops villi about 2 weeks after fertilization, is vascularized by allantoic vessels a week later, gives rise to the placenta, and persists until birth." "Amnion" generally means "membrane enveloping the fetus.")

A Registered Nurse noted the following on March 16, 2002:

Pt arrived on unit accompanied by L & D staff via wheelchair, report received. Careplan initiated, (1) pain is present, there is a hx of a previous fall associated with pt's line of work, pain is still present from this fall and from uterus. (2) Pt expressed guilt, and sadness over the loss of this pregnancy.

Dr. Chatelain authored a discharge summary on March 17, 2002:

The patient is a 28-year-old white female, Gravida 5, Para 1, Abortus 3, with an intrauterine pregnancy at 17 weeks of gestation based upon a due date of August 17, 2002. This patient was transported from El Dorado, Arkansas where she had presented with a history of heavy vaginal bleeding the previous night. The patient was found to have

a symptomatic anemia with an (sic) hematocrit of 22%. The patient gave a history of having intermittent vaginal bleeding for the month prior to her presentation to that hospital. This bleeding started several days after a fall at work.

On arrival at Baptist Health Medical Center, the patient was found to be in obvious distress....The patient was found to have a bloody foul smelling discharge exiting the cervix. She was unsure as to how long she had been leaking amniotic fluid....Ultrasound was performed which showed a singleton fetus in a vertex presentation. The estimated fetal weight was 209 grams consistent with 17.1 week size. The fetus had a tachycardia of 175 beats per minute. There was minimal amniotic fluid. A diagnosis of chorioamnionitis was made....

Once the patient was given 400 MCG of cytotec orally, she quickly entered into a labor pattern and approximately two hours later she delivered a nonviable female fetus....

Dr. Chatelain's discharge diagnosis was "Intrauterine pregnancy at 17 weeks, vaginal bleeding, symptomatic anemia, premature rupture of membranes with chorioamnionitis."

Dr. Ezell reported on April 10, 2002:

She states that she continues to not receive worker's compensation benefits and she does not have a light duty available. She states that on the morning of the injury 02/05/02, she and a fellow co-worker were walking on a catwalk....The patient came across the catwalk, fell in the hole, landed on her left thigh, left abdomen and left shoulder. She does report that the pain in her neck is improved.

Dr. Ezell assessed "Status-post abruptio placenta with miscarriage. Patient continues to have vaginal bleeding. Cervical strain improved. Left shoulder strain - I cannot rule-out rotator cuff injury. Sacroiliac strain." Dr. Ezell referred the claimant to an orthopedic surgeon "for further evaluation of the left shoulder, neck and low back....She should remain off work until cleared by Dr. Chatelain and return to see me as otherwise necessary."

An orthopaedist, Dr. Gregg L. Massanelli, informed Dr. Ezell on April 23, 2002, "Her MRI was completely normal. I have given her six sessions of physical therapy and I have put her on two weeks of Bextra 20 mg q.d. At the end of two weeks I think she should be able to return to regular activity from her shoulder standpoint."

Dr. Chatelain wrote to the claimant's attorney on April 23, 2002:

Kenya Baker has asked me to give you my thoughts on the possible causation of her recent miscarriage.

As you are aware, Ms. Baker was transported to Baptist Health Medical Center from El Dorado, Arkansas, where she had presented with a history of heavy vaginal bleeding the previous night. The patient was found to have a symptomatic anemia with a hematocrit of 22 percent. On arrival at Baptist Health Medical Center, the patient was obviously infected, with a final diagnosis of acute chorioamnionitis being made. Ultrasound

showed a fetus consistent with only 17.1 weeks size with very minimal amniotic fluid. She required blood transfusion and induction of labor. She was also given multiple courses of antibiotics.

The patient's admission history was that she had fallen at work approximately five weeks before presentation to Baptist Health Medical Center. She describes loss of a mucoid discharge almost immediately after her fall, with the onset of vaginal bleeding the next day.

It is difficult for me to directly relate the loss of this pregnancy to the fall. The only connection that could be made would be that the patient's vaginal bleeding was due to disruption of the placenta within the uterus with an accumulating blood clot. This blood clot could have served as a focus of infection, which weakened the patient's bag of waters and caused the rupture of membranes. From my perspective, the patient's pregnancy loss was most immediately due to chorioamnionitis, secondary to premature rupture of membranes. The connection between premature rupture of membranes and the bleeding and then the fall is more difficult to make.

Dr. Ezell released the claimant to "full work duties without restriction" on April 29, 2002. The claimant testified that she returned to work on April 30, 2002.

Dr. Coffman wrote on May 22, 2002:

Ms. Kenya Baker is requesting an affidavit from me, concerning her medical care for a recent pregnancy, and for the purpose of applying for disability benefits.

Ms. Kenya Baker was cared for through this office....

She had a total of five pregnancies, with one living child, and three previous elective pregnancy terminations. She was in good general health.

Her recent pregnancy was complicated by a fall, which she stated occurred at work, and resulted in pain, and vaginal bleeding. The fall occurred at approximately 11 weeks gestation, but she first presented to this office at approximately two weeks later, at 13 weeks gestation, with this complaint.

According to the history she gave me in a conversation today, after her last visit here on 3/12/02, she subsequently developed a fever of 104 degrees F., was seen in the emergency room in El Dorado, AR, subsequently transferred to Little Rock, and subsequently miscarried at approximately 18 weeks gestation.

Ultrasound studies of this pregnancy always revealed a viable infant and adequate amniotic fluid. There was never any sign or evidence of ruptured amniotic membranes. Bed rest was advised.

Initially, a cervical encirclage procedure (placing a suture around the cervix) was suggested to this patient, as possibly beneficial, but she refused the procedure.

There was one questionably abnormal ultrasonographic finding of interest, composed of a small area of placental lucency seen on ultrasound, which was thought to possibly be a small placental abruption, but it must be emphasized that this finding was considered equivocal.

There is ***no specific treatment for placental abruption at this stage of pregnancy***, and bed rest and repetitive observation was advised.

Note: Pregnancy loss is a common problem in the practice of obstetrics. There are three possible categories of certainty with regard to determination of the etiology of pregnancy loss. Obstetricians are frequently asked to state, with precision, the cause of such problems. The three possible categories of answers, when an answer can be found, are: 1.) Medical certainty, 2.) Medical probability, and 3.) Medical possibility.

If this equivocal ultrasonographic finding was actually a placental abruption, then trauma, such as that seen after a fall could theoretically have been causal. Whether this was related to her subsequent pregnancy outcome must be decided by the subsequent treating physician.

Because the care rendered at the two locations in Arkansas, and the subsequent events proximate to the pregnancy loss occurred via those treating physicians, I am unable to comment on their findings, care, or conclusions.

I have had no access to these records nor have I spoken to these physicians. Therefore I will necessarily limit my remarks to the care which occurred within my purview.

In summary, it is **medically possible** for a fall, of sufficient force, or any other significant trauma to damage a pregnancy.

Whether or not this fall was the cause of her subsequent pregnancy outcome, cannot be stated with certainty by me, because I was not in medical attendance when the care in Arkansas was rendered. Although the fall could be related, I am handicapped in the fact that I do not have access to the records of the subsequently treating physicians.

Therefore, I must limit my conclusions to the fact that it is a medical possibility for significant trauma to cause pregnancy loss. I cannot state with medical certainty that trauma was causal in

this case. Any such conclusion would best be determined by the physician who was in attendance during the pregnancy loss event.

The claimant contended that she was entitled to temporary total disability compensation from February 10, 2002 through April 29, 2002. The claimant contended that she was entitled to "medical expenses related to the loss of her child." The respondents contended that they had paid no temporary total disability compensation "since work was available within the restrictions of the Claimant's treating physician had it not been for restrictions placed on her as a result of the loss of her child." The respondents contended that they accepted compensability for the February 5, 2002 accident, "except the claims for the loss of the Claimant's child."

Hearing before the Commission was held on July 24, 2002. The claimant testified that the only physical problem remaining from her compensable injury was "just my shoulder." The administrative law judge found, "On February 5, 2002, the claimant sustained injuries to her neck, left shoulder, left hip, left thigh and right ankle arising out of and in the course of her employment. The accidental injury also resulted in complications relative to her (sic) claimant's pregnancy which required medical treatment and

culminated in the loss of the fetus." The administrative law judge found that the claimant was temporarily totally disabled from February 10, 2002 through April 29, 2002. The administrative law judge ordered the respondents to "pay all reasonable hospital and medical expenses arising out of the injuries of February 5, 2002."

The respondents appeal to the Full Commission.

II. ADJUDICATION

The claimant asserts that she sustained a spontaneous miscarriage as a result of the February 5, 2002 compensable injury. The injured party bears the burden of proof in establishing that she is entitled to benefits, and she must sustain that burden by a preponderance of the evidence. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). The determination of whether a causal connection exists is a question of fact for the Commission. Jeter v. B.R. McGinty Mechanical, 62 Ark. App. 53, 968 S.W.2d 645 (1998). The basic test is whether there is a causal connection between the two episodes. Air Compressor Equip. v. Sword, 69 Ark. App. 162, 11 S.W.3d 1 (2000).

In the present matter, the Full Commission reverses the administrative law judge's finding that the February 5, 2002 compensable injury "culminated in the loss of the fetus."

The record indicates that the claimant already had at least two episodes of spotting in January 2002, when she was pregnant and before the February 5, 2002 accidental injury. The claimant testified that she fell several feet through a hole and essentially jarred the left side of her body. The first medical record after this incident, dated February 11, 2002, showed from ultrasound good cardiac activity with the claimant's baby, no evidence of "abruption," and an "adequate amount of amniotic fluid." The preponderance of the evidence indicates that the claimant's baby had not been injured as a result of the claimant's fall.

The claimant received additional medical treatment on February 15, 2002. Dr. Coffman noted, "Pelvic ultrasound reveals that the uterus is normal in size for gestational age and the uterus contains a viable fetus. The fetus is appropriate for gestational age and there is normal fetal morphology and normal fetal movement." More testing carried out on February 18, 2002 showed "good fetal movement, adequate amount of amniotic fluid, placenta intact." Again on February 22, 2002, "A pelvic ultrasound reveals the uterus to be essentially normal in appearance for its gestational age with a viable infant with normal fetal heart activity and normal amniotic fluid. There is perhaps a

small area of abruption surrounding a portion of the placenta but this is an equivocal finding and may or may not be significant and no intervention is possible in order to correct this." The treating physician did not connect the small "area of abruption" to any sort of accident or trauma.

The claimant reported feeling "much better" on February 27, 2002. Testing carried out on March 12, 2002 still showed "no obvious placental abruption." Nevertheless, the claimant was transported to Baptist Health Medical Center on March 14, 2002. Even though another ultrasound still showed a normal fetus, Dr. Chatelain recommended delivery due to "chorioamnionitis." We can find no causal connection between this inflammatory condition diagnosed by Dr. Chatelain and the February 5, 2002 accidental injury. The claimant delivered a nonviable fetus on or about March 16, 2002.

The preponderance of the evidence does not show a causal connection between the claimant's tragic miscarriage and her compensable injury. Dr. Chatelain wrote in April 2002, "It is difficult for me to directly relate the loss of this pregnancy to the fall." Dr. Coffman wrote in May 2002 that it was "medically possible" that trauma could damage a pregnancy. Dr. Coffman stated, however, that he could not

offer a causation opinion. Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. §11-9-102(16)(B). Where a medical opinion is sufficiently clear to remove any reason for the trier of fact to have to guess at the cause of the injury, that opinion is stated within a reasonable degree of medical certainty. Huffy Service First v. Ledbetter, 76 Ark. App. 533, 69 S.W.3d 449 (2002), citing Howell v. Scroll Tech., 343 Ark. 297, 35 S.W.3d 800 (2001). Expert opinions based on "could," "may," or "possibly" lack the definiteness required to meet a claimant's burden of proving causation. Frances v. Gaylord Container Corp., 341 Ark. 527, 20 S.W.3d 280 (2000); Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000).

In the present matter, the preponderance of evidence does not show a causal connection between the claimant's compensable injury on February 5, 2002 and the delivery of a nonviable fetus on March 16, 2002. In addition, neither Dr. Chatelain's opinion nor Dr. Coffman's opinion meet the definiteness required to establish compensability within a reasonable degree of medical certainty. We therefore reverse the finding of the administrative law judge in this regard.

Based on our *de novo* review of the entire record, the Full Commission affirms the administrative law judge's finding that the claimant sustained compensable injuries on February 5, 2002, and that the claimant was temporarily totally disabled from February 10, 2002 through April 29, 2002. The record shows that, as a result of the claimant's compensable injuries, she remained within her healing period and totally incapacitated to earn wages from February 10, 2002 through April 29, 2002. We reverse the administrative law judge's finding, "The accidental injury also resulted in complications relative to her (sic) claimant's pregnancy which required medical treatment and culminated in the loss of the fetus." The preponderance of evidence indicates that these complications were not causally related to the February 5, 2002 compensable injuries. The Full Commission thus affirms in part and reverses in part the administrative law judge's opinion. All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002). For prevailing in part on this appeal before the Full Commission, claimant's attorney is hereby awarded an

additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715 (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

JOE E. YATES, Commissioner

Commissioner Turner concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

_____ While I concur with the opinion of the majority finding that claimant is entitled to benefits for temporary total disability from February 10 through April 29, 2002, I must respectfully dissent from the finding that the complications claimant experienced with her pregnancy were not causally related to the compensable injury.

SHELBY W. TURNER, Commissioner