

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F213003

MELISSA FIGUEROA, EMPLOYEE	CLAIMANT
FRED'S INC., EMPLOYER	RESPONDENT
GENERAL ACCIDENT OF AMERICA, ESIS, CARRIER	RESPONDENT

OPINION FILED DECEMBER 15, 2003

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

Claimant presented Pro Se.

Respondent represented by HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed

OPINION AND ORDER

The respondents appeal from an Administrative Law Judge's opinion filed April 28, 2003, which found that the claimant sustained a compensable injury on December 20, 2001; that she is entitled to continuing medical treatment; and that she is entitled to a one-time change of physician. Based upon our de novo review of the record, we reverse the decision of the Administrative Law Judge.

The 19-year-old claimant sustained a fall while working for the respondent on December 20, 2001. The claimant has received extensive medical treatment relative

to her left upper extremity, including physical therapy and numerous diagnostic tests. She initially received medical treatment in the emergency room of Southwest Hospital on the date of the fall. She was thereafter treated by Dr. Wolverton, then by Dr. Yocum, an orthopaedic physician, and then by Dr. Burba, a neurologist. The claimant has undergone a bone scan and MRIs of her cervical spine, left shoulder, and brachial plexus. The claimant was off work for one month following the fall. The respondents paid temporary total disability benefits, and some medical benefits. At the time of the hearing, the claimant continued to complain of pain in her upper left extremity. Additional recommended medical treatment included a Minnesota Multiphasic Personality Inventory and surgical arthroscopic evaluation. The claimant has not been released from treatment by either Dr. Yocum or Dr. Burba.

In order to establish the compensability of an injury, a claimant must satisfy all of the requirements set forth in Ark. Code Ann. §11-9-102(Repl. 2002). A claimant bears the burden of proving by a preponderance of the evidence that she sustained an accidental injury as a result of a specific incident, identifiable by time and place of

occurrence, which caused internal or external harm to the body, which arose out of and in the course of her employment, and which required medical services or resulted in disability or death. Ark. Code Ann. §11-9-102(4)(A)(i) and §11-9-102(4)(E)(i). Ark. Code Ann. §11-9-102(4)(D) further requires that a claimant establish a compensable injury by medical evidence supported by objective findings, as defined in §11-9-102(16). Finally, medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. §11-9-102(16)(B). In determining whether a claimant has sustained her burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. § 11-9-704. If the claimant fails to establish by a preponderance of the credible evidence any of the requirements for establishing the compensability the claim, compensation must be denied.

Based upon our review of the evidence in this case, we do not find that the claimant met her burden of proof that she sustained a compensable injury. The claimant has failed to present any medical evidence supported by objective findings of any injury to her left upper

extremity. A review of the cervical MRI report dated February 21, 2002, opines that the claimant had a normal MRI of the cervical spine. That report states: "There is straightening of the normal cervical lordosis that is probably related to positioning." (Emphasis added.) The reviewing radiologist's conclusion was that the study was entirely normal. No muscle spasms, nor any other objective findings of injury, were ever noted in any of the medical records presented, including those records that were blue-backed and admitted into evidence on the Administrative Law Judge's own motion (over the respondent's objection). Further, there were no objective findings noted in the records from the claimant's initial treatment in the emergency room on the date of her fall.

Because the claimant failed to present any medical evidence supported by objective findings that she sustained any injury, her subjective complaints of pain are insufficient to establish her entitlement to benefits. Additionally, the fact that the claimant has continued to perform her employment duties and that her doctor has recommended psychological testing raise concerns as to the reliability of her continued complaints.

For the foregoing reasons, we find that the Administrative Law Judge's opinion should be and is hereby reversed. This claim is denied and dismissed.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.