

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F200710

TONY W. PAYNE, EMPLOYEE	CLAIMANT
MCEXPRESS, INC., EMPLOYER	RESPONDENT
AMERICAN INTERSTATE INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 11, 2003

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

Claimant represented by HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

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 to the Full Commission an Administrative Law Judge's opinion filed on December 17, 2002. The Administrative Law Judge found that the claimant sustained a compensable injury, was entitled to reasonable and necessary medical treatment associated with that injury, and remained in his healing period and was entitled to temporary total disability benefits from January 4, 2002, through the date he began his part-time employment in October 2002. After reviewing the entire record *de novo*, the Full Commission finds that the claimant failed to meet his burden of proof that he sustained an accidental injury

as a result of a specific incident. We therefore reverse the opinion of the Administrative Law Judge.

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 he 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 his employment, and which required medical services or resulted in disability or death. In determining whether a claimant has sustained his 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.

The 44-year-old claimant is six feet tall and weighs 425 pounds. He has high blood pressure and diabetes, and takes medication for an anxiety disorder. The claimant was in a motorcycle accident in 1974, which resulted in a steel plate being put in his left leg. He was in a motor

vehicle accident in 1999, but did not seek any medical treatment as a result of that accident. The claimant has been residing in Florida for the past three years.

The claimant testified that on January 3, 2002, he had difficulties removing a chock from under his truck tire, and that he had to bend over and beat the chock with a hammer and then a crowbar to remove it. He testified that this activity took 15 to 20 minutes, and that he did not feel any pain or have any physical problems while removing the chock. The claimant testified that as he was driving down the road an hour and a half later, his left leg went numb from the knee down, so he pulled in to a rest area and rubbed it. The numbness did not dissipate, and the claimant laid down and took a nap. He testified that when he awoke his neck, shoulders, arms and hands were hurting, and that several days later the pain spread to his low back.

After waking up at the rest stop in pain, the claimant called in and told his employer that he could not finish driving the load. He returned the load to Memphis and was then driven to Jonesboro, where he went to Regional Medical Center of Northwest Arkansas. The first page of the hospital record from Jonesboro states that the claimant presented with a history of numbness in his lower

extremities, neck, and shoulder, with "no known injury." The second page states as a history that the claimant "was adjusting his brakes when he single 'seemed to hurt himself'". The claimant was asked about this phrasing and he responded, "The only thing I had done physically since I left the office in Jonesboro that day was knock that chock out from under that trailer and hook up the truck and take off in it. So I didn't know what to attribute it to other than that."

The claimant then rested at his sister's house in Paragould for 12 days. While in Paragould, he was seen at the Antosh Medical Clinic on January 7, 2002. With regard to the claimant's work status, Dr. Antosh noted at that time that the claimant was able to perform modified work with limitations as tolerated.

The claimant then returned to his home in Florida, where he has received treatment from his regular family physician, Dr. Dube, and has had two hospitalizations: the first after he fell at his home; the second following an episode of shortness of breath, during which he underwent tests on his neck, back, shoulders, etc.

At the Florida Hospital Orlando, a venous doppler study was performed on January 28, 2002, with respect to the

claimant's "swollen, painful" left leg. The impression of the doctor who reviewed the test results was, "Mild atherosclerotic occlusive disease located primarily in the right superficial femoral artery and the left popliteal artery. The patient may have evidence of right common femoral or iliac occlusive disease." A radiology exam of the same date of the claimant's left leg revealed postoperative changes from the previous steel plate fixation, but the deformities appeared old and stable, and osteomyelitis was ruled out.

An admission record from Orlando Regional Healthcare System dated February 4, 2002, gives the following history:

A 43-year-old white male who is a truck driver and experienced some trauma after trying to remove a wedge from underneath a truck tire. Mr. Payne used a hammer and a crowbar for approximately 30 minutes to remove a wedge underneath the tire which precipitated his left leg numbness from the knee downward, as well as his left hand numbness. This occurred January 3, and his symptoms have progressively gotten worse with conservative treatment, non-steroidal, muscle relaxant and pain relievers. Mr. Payne was seen in Dr. Dube's office on January 27 secondary to a fall in a doorway because of the paresthesia in the left leg after his January 3 trauma. He was not seen prior to this for treatment. During that time he was

stated on antiinflammatory drugs, muscle relaxant, and a pain medication. Today, a patient comes in to Dr. Dube's office with continuous complaints. He had had a venous doppler done secondary to the edema in the left leg with the trauma on January 27, which was negative for DVT. He now comes in with complaints of pain, increased swelling. Patient is walking into the office moving all extremities but complains of continued paresthesia and numbness. Patient was directed to South Seminole Hospital as a direct admission for pain relief as well as evaluation.

The physical examination section of this report notes that the claimant's left leg showed a moderate amount of edema, and was red, hot, tender, and swollen.

A cervical spine MRI, performed on February 5, 2002, revealed a moderate disc protrusion at C5-6 that, "impresses mildly upon ventral cord but is not associated with spinal canal compromise," and a mild disc bulge at C4-5 without associated stenosis. An MRI of the claimant's lumbar spine obtained on February 6, 2002, was limited by the patient's weight, but showed "[m]ultifactorial canal narrowing at L3-4."

A discharge record from Orlando Regional dated February 6, 2002, shows that the claimant had been attended by neurologist Bruce R. Hoffen. The report does show that it was recommended that the claimant be followed up with

regard to the disc protrusion at C5-6 with a neurosurgeon on an outpatient basis.

Correspondence from Dr. Dube dated August 5, 2002, states:

Tony Payne is a patient of this office being treated for several conditions. Tony was seen on 01-15-2002 for complaints of left hand numbness, left leg numbness, left foot numbness and at times back and shoulder pain. Patient states he was at work performing job duties when he started feeling these symptoms. These symptoms were not pre-existing and are related to his job duties.

At the time of the hearing, the claimant testified that he continued to have stiffness in his neck, pain across his shoulder blade, numbness in both arms from the elbow down, pain into his low back, left hip and leg, and that the bottom of his left foot is numb.

We find that the claimant failed to prove any causal relationship between his activities on January 3, 2002, and his subsequent medical condition. Dr. Dube's August 5, 2002, correspondence stating that the claimant's conditions are work-related, is based solely on the claimant's history that he was performing job duties when he started feeling these symptoms; and the claimant himself testified that the only reason he attributed his symptoms to

the removal of the chock was that he had not done anything else physical that day. The claimant did not experience any pain while he was removing the chock, and did not experience any symptoms for at least an hour and a half after that time. A medical opinion based solely upon claimant's history and own subjective belief that a medical condition is related to a compensable injury is not a substitute for credible evidence. Brewer v. Paragould Housing Authority, Full Commission Opinion filed Jan. 22, 1996 (E417617). The Commission is not bound by a doctor's opinion which is based largely on facts related to him by claimant where there is no sufficient independent knowledge upon which to corroborate claimant's claim. Roberts v. Leo-Levi Hospital, 8 Ark. App. 184, 649 S.W.2d 402 (1983).

No matter how sincere a claimant's beliefs are that a medical problem is related to a compensable injury, such belief is not sufficient to meet the claimant's burden of proof. Killenberger v. Big D Liquor, Full Commission Opinion August 29, 1995 (E408248 & E408249).

Further, we find that the award of temporary total disability is in error, as the medical records do not contain evidence of any condition that has rendered the claimant unable to work. No doctor has ever taken the

claimant off of work, and the only evidence that the claimant was disabled from January through October is the claimant's own testimony. For the foregoing reasons, we find that the opinion of the Administrative Law Judge should be reversed. We therefore reverse the opinion of the Administrative Law Judge, and deny and dismiss this claim.

IT IS SO ORDERED.

---

OLAN W. REEVES, Chairman

---

JOE E. YATES, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

\_\_\_\_\_ I must respectfully dissent from the majority opinion, which reverses the decision of the Administrative Law Judge that the claimant experienced a compensable injury on January 3, 2002.

As its basis for reversing the decision of the Administrative Law Judge, the majority finds that the claimant failed to prove any causal relationship between his activities on January 3, 2002 and his subsequent medical condition. In support of this finding, the majority states:

Dr. Dube's August 5, 2002 correspondence stating that the claimant's conditions are work-related, is based solely on the claimant's history that he was performing job duties when he started feeling these symptoms; and the claimant himself testified that the only reason he attributed his symptoms to the removal of the chock was that he had not done anything else physical that day. The claimant did not experience any pain while he was removing the chock, and did not experience any symptoms for at least an hour and a half after that time.

Even if it is conceded solely for purpose of argument that Dr. Dube's opinion as to causation is not to be credited, case law establishes that the causation element of compensability need not be established by medical opinion. Wal-Mart Stores, Inc.v.VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999); Stephens Truck Lines v. Millican, 58 Ark.App. 275, 950 S.W.2d 472 (1997). Therefore, even if Dr. Dube's opinion as to causation is deemed not to be credible (a conclusion I do not believe to be proper), such a conclusion would not in any way operate to defeat claimant's claim. The claimant may still prove causation with non-medical evidence.

As to the fact that claimant did not immediately experience symptoms, I find no evidence in the record, medical or otherwise, which would indicate that the

claimant's musculoskeletal problems could only have been caused by the January 3, 2002 work accident if claimant immediately experienced symptoms. Therefore, to the extent that the majority has concluded that this delay in the onset of claimant's symptoms tends to indicate that the symptoms bore no causal relation to the work accident, I would respectfully assert that the record does not support such a conclusion.

In determining whether the claimant's current difficulties are the result of the January 3, 2002 incident, the Full Commission must simply look to the totality of the evidence in the record, including the claimant's medical history and pattern of treatment. I find that a review of these factors leads to the conclusion that more likely than not, the claimant's work incident bears a causal relation to the claimant's objectively identified musculoskeletal problems. Quite simply, save for a motorcycle accident which occurred nearly 30 years ago, there is no evidence in the record of any documented medical problems with claimant's musculoskeletal system that pre-existed the work incident. Furthermore, the claimant's symptoms began on the same day that the incident occurred, and claimant first

sought medical treatment on the same day that the incident occurred.

As to claimant's weight and/or diabetes being a possible pre-disposing factor, the fact that a claimant has factors pre-disposing him to the injury does not operate to render his injury non-compensable. Case law is clear that an employer takes a claimant "as he is." Smith-Blair, Inc. v. Jones, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Therefore, while claimant's weight and/or diabetes may have put him at greater risk of incurring a musculoskeletal injury on the job, such fact would not mean that his injury cannot be compensable because pre-disposing factors enabled the occurrence of the injury.

The majority also determines that even if claimant had proven a compensable injury, he failed to prove entitlement to any temporary total disability benefits. The majority makes this determination because no doctor has ever taken the claimant off work, and thus the only evidence in support of claimant's temporary total disability claim is his own testimony. While it is true that no doctor ever specifically took claimant off work, it is not legally necessary for claimant to prove entitlement to temporary total disability benefits with doctors' off-work slips. The

claimant testified that he is unable to work, and the Administrative Law Judge, who observed his demeanor while testifying, believed him. Therefore, I find that this determination of the majority is also erroneous.

I respectfully dissent.

---

SHELBY W. TURNER, Commissioner