

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F113124

BETTY SPEAKS,
EMPLOYEE

CLAIMANT

CEDARVILLE PUBLIC SCHOOLS,
EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER

RESPONDENT

OPINION FILED NOVEMBER 3, 2003

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

Claimant represented by HONORABLE EDDIE H. WALKER, JR.,
Attorney at Law, Fort Smith, Arkansas.

Respondents represented by HONORABLE JAMES ARNOLD II,
Attorney at Law, Fort Smith, Arkansas.

Decision of the Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

This case comes on for review by the Full
Commission on appeal by respondents from an opinion filed
herein by an Administrative Law Judge on February 12, 2003.

The Administrative Law Judge entered the following
findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation
Commission has jurisdiction of this
claim.
2. On November 8, 2001, the
relationship of employee-employer-

carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$208.00 for temporary total disability and \$156.00 for permanent partial disability.
4. The claimant has proven by a preponderance of the evidence that she sustained a compensable back injury while working for the respondent on November 8, 2001.
5. The respondents should pay for the cost of this claimant's medical treatment for her compensable injury.
6. The claimant is entitled to temporary total disability from November 8, 2001, to a date to be determined for her compensable injury.
7. The respondents have controverted this claim in its entirety.
8. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

We have carefully conducted a de novo review of the entire record herein, and it is our opinion that the decision of the Administrative Law Judge is correct and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made

by the Administrative Law Judge are correct, and they are, therefore, adopted by the Full Commission.

We therefore affirm the February 12, 2003 opinion of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission. 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).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing 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(b) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I respectfully dissent from the majority opinion finding that the claimant sustained a compensable injury to her back and is entitled to medical benefits and temporary total disability benefits to a date yet to be determined. Based upon my de novo review of the evidence, I find that the claimant failed to prove by a preponderance of the evidence that her low back problems were caused by a specific incident.

The claimant testified that on November 8, 2001, she was throwing trash into a dumpster and twisted her back. She testified that she immediately felt as if she had strained a muscle in her back. The claimant reported this incident to her employer and was instructed to see Dr. Ross. She received physical therapy, prescription pain medication, and was ultimately referred to Dr. Thompson, an orthopaedic physician. Dr. Thompson recommended that the claimant have surgery; however, she refused this treatment because she is diabetic and has high blood pressure. The claimant was concerned about the risks involved in a surgical procedure. The claimant's workers' compensation coverage for her medical treatment was terminated in June 2001. She testified that she had not received medical treatment since that termination.

The claimant initially testified that the incident occurred on a Friday, and that she did not report her injury until the following Monday because the incident occurred in the evening after everyone else had left. The records from the claimant's initial treatment with Dr. Ross indicate that her visit with him occurred on November 13, 2001. The claimant provided a history of her injury having occurred "last Thursday." The claimant conceded on cross-examination that she could not remember whether her injury occurred on Thursday or Friday, or whether her husband had reported it on Friday or Monday.

The claimant stated at the time of the hearing that she was having problems with pain at her waist on her right side, and tingling in the lower part of her left leg. She testified that she never had any back problems prior to November 2001, and only acknowledged having prior problems with her right hip. The claimant acknowledged that she had sought treatment from Dr. Seubold, a chiropractor, four or five times for her hip complaints.

The claimant's family physician is Dr. Floyd. Dr. Floyd's record for June 30, 1998, states that the claimant came in "complaining of her lower back hurting." The records from July 28, 1998, state that the claimant came in "complaining of muscle pain." A hand-written entry from

that visit indicates that the claimant was complaining of leg pain. The claimant saw Dr. Floyd in August 1999 and the records from that visit reflect that the claimant complained of back pain. Dr. Floyd's records from June 25, 2001, also indicate that the claimant was having back pain.

The claimant was first examined by Dr. Seubold on October 27, 1998. His records from that date reflect that the claimant was having problems with tingling in her left leg to her foot. The note indicates that the claimant has a leg length deficiency of a half-inch on the left side. In the "lumbar" column of a diagnosis chart from that date the categories of radiculitis and sciatica are circled, and in the "pelvis sacrum coccyx" column, the category for muscle spasm is circled. The second page of this chart has a section regarding symptom components, and the category for low back pain and pain in lower leg are circled. A handwritten record from that same date indicates that the claimant had sustained a fall at her home. In a section which records the claimant's history with regard to this fall, it is written that the claimant indicated that her pain radiated into her left leg and foot, and that the location of the pain was in her low back and buttocks. A diagram of the human body reflects that the claimant's complaints are located in the low back and buttocks.

Dr. Seubold authorized the claimant to be absent from work from May 12, 1999 through June 1, 1999 for lumbosacrailliliac neuro-spinal compression syndrome. A report from the Seubold Chiropractic Clinic dated June 2, 1999, indicates that the claimant had sustained a fall at school. In the "pelvis sacrum coccyx" column of the diagnosis chart from that visit the categories for muscle spasm, sprain/strain sacrotuberous ligament, and myalgia and/or myofascitis were all circled. Dr. Seubold's records reflect that in May and June of 1999 the claimant's complaints included that her left knee and the front of her left shin felt like they were on fire. Records from Dr. Seubold's clinic reflect treatment of the claimant occurring over the course of 22 visits, between October 1998 and August 2000.

The claimant was seen by Dr. Floyd in August 1999 and June 2001, and records from these visits indicate a history of back pain.

The radiology report regarding the claimant's lumbar spine dated November 13, 2001, states in the Impression section:

Anterior spondylolisthesis of L4 on L5 with chronic disc disease at the level of L4-5 and L5-S1. Duration of these abnormalities cannot be determined from this single study.

The report from an MRI obtained on November 26, 2001 gives the following opinion:

Numerous abnormalities are present including grade I spondylolisthesis at L3-4 and grade II spondylolisthesis at L5-S1. Foraminal narrowing at multiple levels is detailed above. There is marked canal stenosis at L3-4. A shallow central HNP is also present at L4-5.

A clinic note from Dr. Thompson dated December 27, 2001, states:

Patient was seen for a problem with her back. . . . On November 8, 2001, she injured her low back by picking up some garbage and throwing it into a dumpster. . . . The pain is in the left hip and left leg, runs down into her thigh rarely below the knee. The low back pain and the pain down the leg are roughly equal. She has been seeing Dr. Ross and Jeannie Finley, who ordered an MRI. The MRI is dramatic in showing marked spinal stenosis at L3-4, a herniated disc at L4-5 and a small disc bulge with a grade I spondylolisthesis at L5-S1. In the cross-section cuts, there is a rather enormous stenosis noted. However, she relates that she was really feeling fine until this one episode. We have put her on rigorous rest at home. . . . I would like to see her in two weeks and see if we can get her over this with conservative management. Nevertheless, there are serious advanced changes.

Although the claimant alleges that her back pain is the result of a specific incident occurring in November

2001, the medical records document that she has had low back complaints for at least three years. The claimant's low back complaints were documented by her primary care physician in 1998, 1999 and 2001. Furthermore, she began extensive chiropractic care for lumbar pain beginning in 1998, following a fall occurring at her home. The claimant was even taken off work for two weeks in May 1999 for spinal compression syndrome. The November 2001 MRI reflects multi-level spondylolisthesis, but states that the duration of this condition could not be determined. Dr. Thompson's December 2001 note indicates that the claimant has "serious advanced changes" but that despite these "enormous" findings, the claimant indicates that she was "really feeling fine" prior to the alleged dumpster incident. I find that Dr. Thompson's report suggests that he was skeptical of this assertion by the claimant based upon the MRI findings. The fact that the claimant denied her previous medical treatment for low back pain also raises questions regarding her credibility. Further, there was no witness to corroborate the alleged dumpster incident, and the claimant herself was unable to testify specifically what day the incident occurred, or what day the incident was reported to her employer.

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Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner