

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F302425

GEORGE FODOR,
EMPLOYEE

CLAIMANT

SPRING MEADOWS, INC.,
EMPLOYER

RESPONDENT

CANNON COCHRAN MANAGEMENT SERVICES,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JUNE 10, 2004

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

Claimant represented by HONORABLE JAY TOLLEY, Attorney at
Law, Fayetteville, Arkansas.

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

Decision of the Administrative Law Judge: Affirmed and
adopted.

OPINION AND ORDER

The respondents appeal from a decision of the
Administrative Law Judge filed August 22, 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 October 25, 2002, the relationship of
employee-employer-carrier existed between the
parties.
3. The claimant is entitled to a compensation
rate of \$267.00 for temporary total

disability. This compensation rate is based on an average weekly wage of \$400.00 for this claimant.

4. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his low back on October 25, 2002.
5. The claimant is entitled to medical treatment for his compensable injury at the expense of the respondent.
6. The claimant has failed to prove by a preponderance of the evidence his entitlement to temporary total disability from December 2, 2002, to a date to be determined.
7. Based on my findings, this is a medical only claim at this time.

We have carefully conducted a de novo review of the entire record herein, and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, 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.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal. 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

Commissioner Turner concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

_____I concur with the principal opinion finding that claimant sustained a compensable back injury but dissent from the finding that he is not entitled to any benefits for temporary total disability.

The employer is a retirement housing center, where claimant worked in maintenance. Claimant testified that on

October 25, 2002, he slipped and fell at work, injuring his lower back. Claimant immediately reported the accident to David Gingray, his supervisor. Claimant then reported the accident to Lela Robbins, the office manager, and Pat Farmer, manager of the entire complex. Claimant's testimony concerning notice of injury is essentially undisputed, because none of these three supervisory personnel testified at the hearing to refute claimant's testimony. The employer repeatedly tried to discourage claimant from seeking medical treatment.

After his condition continued to worsen, claimant was finally able to present to Dr. Kirk Johnson, a chiropractor, on October 30, 2002. The history documented by Dr. Johnson was that claimant's condition "began a week or so ago originally having a very sore lower back but yesterday when he turned as he [sic] walking through the kitchen, he felt a sudden sharp pain in his lower back which then radiated into his legs...." Claimant asserted that he informed Dr. Johnson of the work-related accident. In fact, in a letter dated March 11, 2003, Dr. Johnson stated that claimant came to his office on October 30, 2002, "complaining of low back pain, which reportedly began the week prior when he fell at work." Claimant's credible

testimony and this correspondence by Dr. Johnson support a finding that claimant informed Dr. Johnson of the work-related accident when he first presented for treatment on October 30, 2002. Further, it doesn't make any sense for claimant to immediately report the work-related nature of his condition to three supervisory personnel but then not give this history to the first provider he saw.

Additionally, I do not believe simply turning and experiencing an increase in your symptoms will support a finding that claimant sustained an independent intervening cause of his condition at home. Claimant was already suffering low back pain as well as numbness and tingling in his lower extremities and the "incident" in the kitchen only added leg pain to his symptomatology.

It appears that claimant did not present to Dr. Johnson between November 25, 2002 and March 3, 2003. In the office note concerning the March 3, 2003 visit, Dr. Johnson documents a history of "[t]his began more or less spontaneously four days ago when he turned suddenly." Claimant denies giving Dr. Johnson such a history and credibly testified that he has not sustained any independent intervening causes of his lower back condition. Since the date of the work-related accident, claimant has had

continuous symptoms, although to varying degrees of severity. In my opinion, there is insufficient evidence of a nonwork-related aggravation of his condition. He had never experienced lower back difficulties in the past, and has had fairly consistent symptoms since the work-related accident.

Based on the above evidence, claimant has met his burden of proving by a preponderance of the evidence that his lower back condition is causally related to his employment.

Concerning temporary total disability, claimant made efforts to continue working for the employer but was unceremoniously laid off without reason on December 2, 2002. Claimant testified that he had been able to perform his regular job duties only because Gingray helped him. Claimant testified that he could not "do any physical work, the lifting." He looked for work but has been unsuccessful in securing employment. Claimant's employment history includes truck driving, auto mechanics, production line work in the poultry industry, and maintenance work. Claimant stated that he could not perform the regular duties required of these positions. There is insufficient evidence that

claimant had the capacity to earn the wages he was receiving at the time of the compensable injury.

Further, the office notes authored by Dr. Johnson indicate that claimant was still within his healing period as of June 2, 2003, the last office visit documented in the record. The hearing was held in this matter on July 22, 2003. There is insufficient evidence that claimant's healing period had ended prior to the hearing.

Based on the above evidence, I find that claimant is entitled to benefits for temporary total disability from December 2, 2002 until an uncertain future date, with appropriate allowances for the receipt of unemployment insurance benefits pursuant to Ark. Code Ann. § 11-9-506 (Repl. 2002). Accordingly, the opinion of the Administrative Law Judge should be reversed in this regard.

For the foregoing reasons, I respectfully concur in part and dissent in part.

SHELBY W. TURNER, Commissioner

Commissioner McKinney concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

I respectfully concur in part and dissent in part from the majority opinion. Specifically, I must dissent from the

finding that the claimant sustained a compensable lower back injury. However, I concur in the finding that the claimant failed to prove by a preponderance of the evidence that he was entitled to temporary total disability benefits.

The claimant was employed by the respondent-employer as a maintenance worker. The claimant worked there through December 2nd, 2002, when he was laid off. The claimant testified that on October 25, 2002, he was going to the lawn shed to retrieve the lawn mower when he slipped and fell on the ramp. The claimant stated that he reported an injury to his supervisor as well as to the office manager of the complex where the claimant worked. The claimant did not seek medical treatment until October 30th, 2002. In the history provided to Dr. Johnson, the claimant did not tell him the reason for his back problem was that he fell on a wet ramp at work. However, the claimant's history stated that the claimant mentioned an incident while walking through a kitchen. It was this incident that produced sharp, lower back pain that radiated into the claimant's legs. The record fails contain a history of the claimant falling on a ramp anywhere in the medical records. The chiropractor took a detailed history from the claimant about him twisting in his own kitchen and hurting his back. If the incident with

the ramp was as significant as the claimant testified to at the hearing, then you would think that the history in the chiropractor's notes would indicate such an incident. The chiropractor's notes fail to indicate there was such an incident.

The claimant continued to perform employment duties for the respondent-employer until he was laid off on December 2, 2002.

The claimant did not seek medical treatment from November 25, 2002, until March 3, 2003. The March 3, 2003, doctors' report indicated that the claimant presented with acute, severe, low back pain radiating the entire length of his left leg. The claimant's history stated that his "pain began spontaneously four days ago when he turned suddenly." It is obvious that the claimant sustained some sort a new injury immediately prior to March 3, 2003. The evidence demonstrates that the claimant did not seek medical treatment for over four months. The history contained within the medical records indicated that the claimant had a sudden pain that appeared spontaneously four days prior to the March 3rd visit, which would be on February 28, 2003. The claimant was obviously not working at that time.

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. §11-9-102(4) (A) (i) (Repl. 2002), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In short, I find that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury. Accordingly, for all the reasons set

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forth herein, I respectfully dissent in part and concur in part from the majority opinion.

KAREN H. MCKINNEY, Commissioner