

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F203380

BETH A. GOODWIN, EMPLOYEE	CLAIMANT
MAVERICK TUBE LP, EMPLOYER	RESPONDENT
CROCKETTT ADJUSTMENT, CARRIER	RESPONDENT

OPINION FILED DECEMBER 21, 2004

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

Claimant represented by HONORABLE TODD WILLIAMS, Attorney at Law, Jonesboro, Arkansas.

Respondent represented by HONORABLE DAVID LANDIS, Attorney at Law, Jonesboro, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

This case comes on for review by the Full Commission from an appeal by the respondents from a decision by an Administrative Law Judge filed February 19, 2004, wherein the Administrative Law Judge found that the claimant sustained a compensable injury to her lower back on March 28, 2002.

A carefully conducted de novo review of this claim in its entirety reveals that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable back injury on March 28, 2002, while

discharging employment duties for the respondent employer. Therefore, the decision of the Administrative Law Judge should be and hereby is reversed.

It is undisputed that on the morning of March 28, 2002, an incident occurred while the claimant was helping her supervisor, Mr. Tommy Wrinkles, lift a large, heavy pipe. The claimant was holding one end of the pipe and Mr. Wrinkles was holding the other. As the claimant and Mr. Wrinkles were moving the pipe, another pipe, which was located underneath the one being raised, came loose and fell, striking the claimant in the left leg. Mr. Wrinkles testified that he and the claimant maintained control of the pipe which they were holding throughout this incident. After successfully lowering the pipe that they were moving, the claimant proceeded to the restroom where she checked herself for injuries. Mr. Wrinkles asked the claimant if she was okay both before she entered the restroom and after she came out. The claimant indicated to Mr. Wrinkles that she was bruised in the shin area of her left leg. The claimant completed her shift, and the next day being Good Friday, she did not return to work until the following Monday. Mr. Wrinkles testified that he asked the claimant on at

least two subsequent occasions about her condition, and that each time she indicated to him that she had sustained only bruising from the incident. The claimant did not receive medical treatment relative to her bruised leg.

The claimant worked for two weeks following the work-related incident of March 28<sup>th</sup>, before finally alleging that she had sustained a back injury from the incident. On April 16, 2002, after what she described as an "unbearable weekend," the claimant was seen by her family physician, Dr. Williams, who stated she "could not flex at the waist and touch her toes." Dr. Williams added that the claimant "hops on either foot just fine." Based upon the claimant's subjective complaints of pain, his physical examination, and normal x-rays of the claimant's lumbar spine, Dr. Williams assessed the claimant with musculoskeletal strain, for which he treated her conservatively and placed her on restricted work duty. Due to her continuing complaints of pain, as of her May 1, 2002, examination, Dr. Williams ordered an MRI of the claimant's lumbar spine and he took her off of work until her return appointment. The MRI, which was taken on May 2, 2002, revealed early degenerative disc disease at L1-L2, with no signs of HNP within the lumbar spine. The claimant was next

seen by Dr. Williams on May 6, 2002, at which time he started her on physical therapy and continued her off of work through May 28, 2002.

Dr. Williams eventually referred the claimant to pain specialist, Dr. Thomas M. Hart, for evaluation. From his initial examination of the claimant on June 28, 2002, Dr. Hart opined that the claimant would benefit from steroid injections under fluoroscopic visualization. Accordingly, Dr. Hart performed two steroid injections with no significant benefit. Subsequently, Dr. Hart performed a discography of the claimant's lumbar spine on August 22, 2002, which was followed by a CT scan. These tests revealed "abnormal morphological appearance and abnormal pressure volume" at L4-L5. Based upon the results of these tests, Dr. Hart recommended that the claimant undergo a percutaneous diskectomy at L4-L5, which was performed on September 19, 2002. This procedure was reportedly successful and the claimant's estimated healing period was 8 to 12 weeks. By December 6, 2002, however, the claimant reported no improvement in her level of pain. At that point, Dr. Hart began reconsidering the basis for the claimant's chronic pain. Accordingly, Dr. Hart proceeded with diagnostic lumbar

facet injections followed by radiofrequency denervation and post-procedural epidural injections. In his report dated July 11, 2003, Dr. Hart made the following statements:

Again, as I discussed with Ms. Goodwin she has multilevel, multifactorial back pain complaints from this initial on the job injury. ... She was not having back complaints according to her history until she had this injury. ... But as Ms. Goodwin indicated today, she does not feel that she has any significant improvement with either percutaneous discectomy or the radiofrequency denervation. ... I would anticipate that at this time since she only had one abnormal disc and she underwent a successful percutaneous discectomy ... that that disc should have improved and we should have significant reduction.

In regards to her continuing complaints of pain, Dr. Hart stated, "I will take her at her word." In addition, Dr. Hart stated that the claimant was not a surgical candidate and that he could do nothing more for her.

On June 9, 2003, the claimant sought an independent medical evaluation from Dr. Manuel F. Carro of the Semmes-Murphey Neurologic & Spine Institute in Memphis, Tennessee.

The claimant has the burden of proving by a preponderance of the evidence that she is entitled to

compensation benefits. Voss v. Ward's Pulpwood Yard, 248 Ark. 465, 425 S.W.2d 629 (1970). Moreover, the claimant bears the burden of proving the compensability of her claim by a preponderance of the evidence, where a preponderance of the credible evidence of record means "evidence of greater convincing force." Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W. 2d 593 (1995); See also, Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 206 S.W.2d 42 (1947). There is no presumption that a claim is compensable, that an injury is job-related, or that a claimant is entitled to benefits. Crouch Funeral Home v. Crouch, 262 Ark. App. 417, 557 S.W.2d 392 (1977); See also, O.K. Processing, Inc. v. Servold, 265 Ark. 352, 578 S.W.2d 224 (1979). Finally, in order to establish compensability for an injury alleging a specific incident, the Commission has stated that the claimant must show by a preponderance of evidence that the injury arose out of and in the course of the employment, that the injury caused external or internal physical harm to the body which required medical services or resulted in disability or death, and that the injury was caused by a specific incident and is identified by time and place of occurrence. Henry Weaver v. Precision Packaging, Full Commission Opinion filed

February 2, 1995 (E400880). In addition, the injury must be established by medical evidence supported by objective findings, as defined by A.C.A. §11-9-102(16), establishing the injury.

The evidence presented in this claim, including the claimant's testimony and the testimony of other witnesses, substantiates that the claimant was involved in a work related incident on March 28, 2002, which resulted in some bruising to her left shin. The claimant's supervisor, Mr. Wrinkles was on the opposite end of the pipe that they were moving and he was, therefore, an eye witness to the event. Mr. Wrinkles testified that the respondent employer trains its employees in proper lifting techniques and that lifting such pipes was a routine part of the claimant's job. Mr. Wrinkles further testified as follows:

... I can't say that Beth jumped out of the way. There was no jumping. We still controlled the pipe we had. I do remember seeing her bring her left leg back. ... As if it [the pipe] had struck her, but no major body movements, no.

In later testimony, Mr. Wrinkles stated that he did not follow up on the incident with an injury report because, "[I]t was a bruised leg ... It was a bump."

Furthermore, Mr. Wrinkles stated that each time he checked with the claimant subsequent to the incident, she informed him only of bruising on her leg and of no other injury. Even though they continued working together until Mr. Wrinkles suffered a heart attack on April 13, 2002, the claimant never indicated in any way to Mr. Wrinkles that she had injured her back.

In her testimony, the claimant admitted that she continued working and she did not report a back injury until mid-April. The claimant testified, however, that her pain was "very bad" during that time that she continued to work until she first reported a back injury. The claimant described her pain as follows:

Well, it would hurt all the way up and down the legs and across my buttocks and down the other leg at that point."

The claimant further testified as follows:

It had just, rather than going away as I hoped it would, it just kept getting worse and worse, and it got to the point where I just simply couldn't stand it any longer. That entire weekend before I went to the doctor is when my legs started jumping, involuntarily jumping.

Later in the claimant's testimony, she described her pain during that time that she was being treated by Dr. Hart as "quite major," extending across her buttocks into her legs, and even into her foot. In spite of her extensive medical treatment, including a percutaneous discectomy, the claimant describes her current condition as "essentially the same."

The medical evidence contradicts the claimant's testimony concerning her condition, however. For example, on her April 16<sup>th</sup> visit with Dr. Williams, which was the first visit that she had with the doctor after the March 28<sup>th</sup> incident, Dr. Williams reported:

There's been no pains down her legs. No distal neurosensory deficits.

Dr. Williams also reported that the claimant could "Flex at the waist and touch her toes," and that "She hops on either foot just fine." Finally, Dr. Williams stated, "Neuro: Non-focal. No frank deficits. DTRs symmetrical." Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. White v. Gregg Agricultural Ent., 72 Ark. App 309, 37 S.W.3d 649 (2001). By

offering what appears to be exaggerated complaints of pains, the claimant has failed to prove herself to be a credible witness. Therefore, her testimony should be given little weight in this matter.

Furthermore, the record is devoid of objective medial evidence to support a physiological reason for the claimant's ongoing complaints of debilitating back pain. Even Dr. Hart, who is a pain specialist, made several failed attempts to pinpoint the precise source of the claimant's chronic pain through various diagnostic procedures, including a diskography and lumbar facet injections. Even though Dr. Hart opined at one point that the claimant's source of pain was due to an internal disc problem, the most that objective testing confirmed throughout the course of the claimant's treatment was multilevel degenerative disc changes. Even Dr. Hart conceded, after the claimant's successful percutaneous diskectomy failed to produce positive results, that the claimant's source of chronic pain might be coming from another source, such as a thyroid condition. Dr. Hart finally discharged the claimant from his care stating that there was nothing more he could offer her in terms of treatment. Finally, Dr. Hart, in his July 11<sup>th</sup>

report, stated that he would have to "take the claimant at her word" in regards to her pain. This statement clearly indicates that Dr. Hart never identified the reason for the claimant's chronic pain. No objective medical reasons for the claimant's ongoing pain has been offered in this claim. Therefore, the claimant has failed to establish a compensable injury in accordance with A.C.A. §11-9-102(16).

When there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. Id. The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. Id. Furthermore, 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 (Claim No. E417617). The record reveals that the claimant was being treated for back problems at the time of the incident on March 28<sup>th</sup>. For example, the claimant had been seen by Dr John S. Williams

on March 12, and on March 26, 2002, for complaints of lower back pain. In response to her complaints, Dr. Williams had prescribed the claimant Skelaxin and Celebrex. When the claimant saw Dr. Williams on April 16, 2002, she told him that her back pain had become "unbearable" since the incident on March 28<sup>th</sup>. The claimant failed, however, to inform Dr. Hart of these prior problems or treatment. Dr. Hart, therefore, was under the impression from the claimant that her back problems began with the incident on March 28<sup>th</sup>. Therefore, any opinion that Dr. Hart has offered in regards to the claimant's back problems having resulted from a job related injury is obviously skewed and should be given no weight. Furthermore, although the evidence preponderates in favor of the claimant having sustained a bruised shin from the incident that occurred on March 28, 2002, the claimant has failed to prove by a preponderance of the evidence that she sustained an injury to her back at that time. Based upon the totality of the evidence, the claimant has failed, in fact, to prove that she has sustained a back injury whatsoever. The greater weight of the credible evidence indicates that it is more likely than not that the claimant suffers from pre-existing,

degenerative disc disease which, according to Dr. Carro, is quite normal for someone her age.

Therefore, and for all of the above stated reasons, the decision of the Administrative Law Judge is hereby reversed and this claim is hereby dismissed.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

\_\_\_\_\_ I must respectfully dissent from the opinion of the majority finding that claimant failed to prove by a preponderance of the evidence that she sustained a compensable back injury on March 28, 2002.

It is undisputed that claimant was involved in a work-related accident on March 28, 2002, when she was lifting pipes with her supervisor, Tommy Wrinkles. Claimant presented credible testimony that in addition to a contusion on her shin, she also sustained an injury to her lower back.

Contrary to respondent's arguments, the results of a discogram have repeatedly been found to constitute sufficient objective findings to establish a compensable injury. In the present case, a discogram performed by Dr. Hart revealed lumbar abnormalities for which treatment was rendered.

Respondent repeatedly alleges that this claim for a back injury occurred only after, and as a vendetta for, a reprimand issued to claimant by the employer. This reprimand had nothing to do with a work-related accident or injury. Respondent's allegation that claimant asserted a lumbar injury in retaliation for this reprimand is unfounded and not supported by any evidence in the record. Claimant did not even know, and incidentally, the employer-representative reluctantly admitted, that she was never put on probation as a result of the incident leading to the disciplinary action. Simply put, there is no evidence to support respondent's insinuation that claimant is asserting a false claim due to the reprimand.

The Administrative Law Judge, who heard the live testimony and observed the demeanor of the witnesses, found claimant to be a most credible witness. There are no

justifiable grounds for hesitating to accept the veracity of claimant's testimony. A denial of a finding of verity should not be based on unsubstantiated allegations. In other words, there must be a valid reason for discounting or disregarding even an interested witness's testimony. There is none in this particular case.

Claimant is being penalized for remaining stoic and avoiding the label of being a complainer by trying to work through her back injury. This case clearly illustrates the danger of any delay in making complaints of pain or reporting injuries to an employer. Many times the symptoms of a lumbar back injury start out relatively minor but progressively worsen over time. This lulls an injured worker into a false sense of hope that her condition will resolve without going through the stigma many endure as a result of filing a claim for workers' compensation benefits. The dilemma faced by many workers in this regard is real and usually results in a denial of benefits to a legitimately injured worker. This is exactly what has happened in the present case. Accordingly, I must respectfully dissent.

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SHELBY W. TURNER, Commissioner