

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E511115

MICHAEL D. LOWE,
EMPLOYEE

CLAIMANT

UNIVERSITY OF ARKANSAS AT PINE BLUFF,
EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JANUARY 14, 2004

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

Claimant appeared PRO SE at the hearing and represented on
appeal by HONORABLE TERRENCE CAIN, Attorney at Law, Little
Rock, Arkansas.

Respondents represented by HONORABLE RICHARD SMITH, Attorney
at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed.

OPINION AND ORDER

The Claimant appeals an Administrative Law Judge's
opinion denying the Claimant entitlement to medical
treatment for alleged compensable consequences of a
compensable work-related injury, denying the Claimant
entitlement to future medical treatment from unauthorized
physicians, and denying that the Claimant suffered any
psychological injury pursuant to Ark. Code Ann. § 11-9-113
stemming from his compensable workplace injury. After a
thorough de novo review of the evidence in this case, we
affirm the opinion of the Administrative Law Judge.

The Claimant is a 46 year-old man who was working as a
skilled trades worker for Respondent, the University of

Arkansas at Pine Bluff (UAPB). On June 28, 1995, the Claimant was injured when a piece of wood flew from a table saw on which he was working into his right eye. The injury eventually caused a complete loss of sight in the Claimant's eye. The injury also caused him to miss 21 months of work. The State of Arkansas Public Employee Claims Division, a co-respondent, found the Claimant's eye injury to be compensable and paid weekly compensation of \$243 as temporary total disability benefits. The Claimant also received some permanent partial disability benefits.

Following his injury, the Claimant went to the emergency room and then to University of Arkansas for Medical Sciences in Little Rock. He was treated by Drs. Steinemann and Bradford. Subsequently, he petitioned the Workers' Compensation Commission for a change of physician and received that change to Dr. Roberson. The Claimant has since sought treatment from two other doctors, a Dr. Paddock and a Dr. Williams. Neither of these physicians were referred to the Claimant by any of the Claimant's treating physicians and neither were authorized.

The Claimant testified at the hearing that after he injured his right eye at work that he was off work for one year and nine months. He stated that he subsequently lost total sight in his right eye, and has had five eye surgeries.

Following this compensable injury, the Claimant states that he has experienced a number of physical problems which he claims are related to the eye injury. These problems include stress, sleep disorders, and headaches. In order to alleviate these problems, particularly the stress, the Claimant began seeing Dr. Tearani Williams of Pine Bluff, his primary care physician under UAPB's employee health insurance plan. The Claimant also began seeing a Dr. Lucy for his headaches. Dr. Lucy prescribed Indomethacin for the headaches. The Claimant asserts that prior to taking the Indomethacin, that he had some sight in his right eye, but that he lost what little remaining sight he had in the eye after taking the medicine.

In order to try to alleviate his sleep disorder, the Claimant saw Drs. Bradford and Stevens of UAMS. These physicians prescribed some medications, but they caused the Claimant to suffer hair loss, at which point the Claimant stopped taking the medication. The Claimant also alleges that he has suffered sexual dysfunction following his injury, which started according to the Claimant's testimony several years after the eye injury.

The Claimant has taken numerous prescription medications to treat the pain following his eye injury. The Claimant introduced, and the Administrative Law Judge admitted into evidence, copies of the information sheets

included with the medication which detailed the possible side effects of the medication. Among the medications that the Claimant took for his pain was Timoptic, which the Claimant began taking in 1995. The Claimant stated that the Timoptic caused him to have sleep problems, depression, headaches, shortness of breath, and dizziness. The Claimant also took Methylpred, which the Claimant asserts caused him to have difficulty sleeping, mood changes, nervousness, eating disorders, weight gain, nausea, headaches, and muscle weakness. Later, the Claimant was prescribed Cosopt, which he claims caused him to have headaches. The Claimant took this medication from 1995 until 2002. Following that, the Claimant began taking Lotemax, which the Claimant asserts led to his having glaucoma in the injured eye. The Claimant underwent surgery for the glaucoma, for which UAPB paid.

In August 1999, the Claimant petitioned the Commission to a change of physician to Dr. Michael C. Roberson. The Commission granted that request. In November 2001, Dr. Roberson stated that the Claimant was having "intractable discomfort recently that is unrelieved by treatment with inflammatory medications." Dr. Roberson recommended that the Claimant have his eye removed and a prosthesis inserted to relieve his pain. The Claimant has so far declined to have that procedure done.

In addition to seeing Dr. Roberson, the Claimant also saw Dr. Williams, who recommended that the Claimant see Dr. Steven Broughton for treatment for psychological problems. Dr. Broughton prescribed Trazadone, a modified cyclic antidepressant. The Claimant acknowledges that neither Dr. Williams or Broughton are Commission-authorized physicians, and the Claimant is not requesting that the Commission order UAPB to pay for the services that he has received from them. He is asking, however, that UAPB compensate him for the additional maladies that he has suffered in the aftermath of his compensable eye injury and for future medical treatment.

Following a hearing on March 20, 2003, the Administrative Law Judge in an opinion filed July 12, 2003 made the following findings of fact and conclusions of law:

1. The employee-employer-carrier relationship existed at all relevant times.
2. The Claimant sustained a compensable injury to his right eye on June 28, 1995.
3. The Claimant's average weekly wage is \$365.20.
4. The Respondents paid permanent partial disability from May 20, 1996 to June 13, 1998.
5. The Respondents paid for Claimant's glaucoma surgery.
6. The Claimant petitioned the Workers' Compensation Commission and received an order changing physicians.
7. The preponderance of the evidence reflects that the Claimant is not entitled to medical treatment for alleged compensable consequences of his compensable eye injury.

8. The preponderance of the evidence reflects that the Claimant is not entitled to future medical treatment from Dr. Williams, Dr. Paddock, or Dr. Broughton.
9. The preponderance of the evidence reflects that the Claimant (sic) did not unreasonably fail to hire Claimant for a position which was available within his ability and restrictions.
10. The preponderance of the evidence reflects that the Claimant did not suffer a psychological injury pursuant to Ark. Code Ann. § 11-9-113.

From these findings of fact and conclusions of law comes this appeal.

Three points of issue are raised in this appeal:¹ Is the Claimant entitled to medical treatment for alleged compensable consequences stemming from his compensable eye injury; is the Claimant entitled to future medical treatment from Drs. Williams, Paddock, and Broughton; and did the Claimant suffer a psychological injury pursuant to Ark. Code Ann. § 11-9-113?

(a) Is the Claimant entitled to medical treatment for the alleged compensable consequences from his compensable eye injury?

The Administrative Law Judge in his opinion noted that the Claimant alleged he has suffered from stress, depression, headache, insomnia, hair loss, rashes, sexual

¹ The Claimant is not appealing the finding of the Administrative Law Judge that the Respondents unreasonably failed to hire the Claimant for a position which was available within his ability and restrictions under Ark. Code Ann. § 11-9-505.

dysfunction, and other side effects of medication as compensable consequences of his admittedly compensable eye injury. As the Administrative Law Judge noted, causal connection is generally a matter of inference, and that the determination of whether a causal connection exists is a question of fact for the Commission.

The Administrative Law Judge stated that the basic test is whether there is a causal connection between the compensable injury and the alleged consequential episodes. The Administrative Law Judge cited the Full Commission opinion of Barnes v. Alma School District, Full Workers' Compensation Commission, Opinion filed July 3, 2000 (E711749 and E905201) for the proposition that there must be objective findings of a compensable consequence. Based on that, the Administrative Law Judge did not find that there were objective findings supporting compensable consequences of the Claimant's compensable eye injury.

In Atchison v. John P. Marinoni Construction Company, Full Workers' Compensation Commission, Opinion filed September 19, 2001 (E616344), the Full Commission stated:

Absent further guidance from the courts, we interpret Ark. Code Ann. § 11-9-102(4)(D) as requiring objective medical findings to establish the full extent of a compensable injury (including alleged compensable consequences) and not just requiring objective medical findings of the initial or primary injury involved.... Consequently, as we interpret the current law, the Claimant is required to establish the existence of any alleged...injury or aggravation by objective

medical findings in order to receive an award of medical benefits for [any compensable consequences].

Atchison, supra (emphasis supplied).

On the other hand, the Commission has noted that the Arkansas courts have on several occasions considered claims for benefits for alleged "compensable consequences" in cases subject to Act 796 of 1993, and in each case, the court has essentially indicated that:

When the primary injury is shown to have arisen out of and in the course of employment, the employer is responsible for any natural consequence that flows from that injury; the basic test is whether there is a causal connection between the two episodes.

Id. (emphasis supplied). See also generally Wackenhut Corp. v. Jones, 73 Ark. App. 158, 40 S.W.3d 333 (2001); Air Compressor Equipment v. Sword, 69 Ark. App. 162, 11 S.W.3d 1 (2000).

With that in mind, and given the Commission's opinion in Atchison, the opinion of the Administrative Law Judge is correct. The Administrative Law Judge stated that the Claimant's testimony was that most of his complaints occurred some years after the initial compensable injury. Additionally, the Administrative Law Judge noted that there was no medical testimony that reflected the presence, severity, or prognosis of any of the Claimant's alleged consequences of the compensable injury. It is the

Claimant's burden to show by a preponderance of the evidence that these consequences were caused by the eye injury.

Bates v. Frost Logging Co., 38 Ark. App. 36, 827 S.W.2d 664 (1992). The Administrative Law Judge did not find that there were objective findings that the Claimant has suffered any of these injuries. Rather, the clear weight of the evidence showed that the Claimant's complaints do not relate to his eye injury. The Administrative Law Judge noted correctly that there are very few medical records introduced into the record that would meet the objective findings threshold.

Under the standard in Barnes, the Administrative Law Judge's opinion should be affirmed. There is little in the way of objective evidence of the existence of these consequences in the medical records or in any other evidence. In fact, very few medical records have been introduced into evidence. There is little in the record before us to establish a causal connection between the eye injury and the other complaints. With this in mind, we find that the Claimant failed to meet his burden of proof.

The Claimant in his brief states that he is still suffering, quoting Dr. Roberson, "intractable discomfort ... that is unrelieved by treatment with inflammatory medications." The Claimant states that his pain is so immune from treatment that Dr. Roberson recommended removal

of the eye. Clearly, a procedure to remove the eye and replace it with a prosthesis would be a compensable consequence of the initial injury, a procedure for which the Respondent would be required to pay. However, of these other complaints that the Claimant alleges, such as insomnia, hair loss, rashes, and sexual dysfunction, being side effects of the medication are simply not proven by objective medical findings and are certainly not stated by a physician with any degree of medical certainty. See, Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000). Perhaps if the Claimant had presented more evidence in this case, he might have met his burden, but, given what we have, we agree with the Administrative Law Judge that the weight of the evidence produced in the record is not enough for the Claimant to meet his burden of proof. Accordingly, this point of appeal must be denied and dismissed.

(b) Is the Claimant entitled to future medical treatment from Drs. Williams, Paddock, or Broughton?

The Claimant alleges that he is entitled to future medical treatment for the stress, depression, headaches, and other consequences of his compensable eye injury. The Claimant states that he is not seeking payment for services not already rendered by the aforementioned physicians. The Claimant further states that he saw each of these physicians for symptoms related to his compensable eye injury and for

nothing else. However, he believes that he should be entitled to future medical treatment stemming from the side effects of the medications that these physicians prescribed in order to alleviate the pain of his compensable eye injury.

The Administrative Law Judge stated that since the Claimant is not entitled to medical treatment for the alleged compensable consequences, he is not entitled to future medical treatment from these doctors for the compensable consequences.

If the Commission finds that the Claimant did not prove by a preponderance of the evidence that he is suffering from these compensable consequences it follows, *a fortiori*, that he cannot have continuing medical treatment for these compensable consequences which would not be compensable. Accordingly, this point of appeal must also be denied and dismissed.

(c) Did the Claimant suffer a psychological injury pursuant to Ark. Code Ann. § 11-9-113?

Arkansas law provides, in pertinent part:

A mental injury or illness is not a compensable injury unless it is caused by physical to the employee's body, and shall not be considered an injury arising out of and in the course of employment or compensable unless it is demonstrated by a preponderance of the evidence; provided, however, that this physical injury limitation shall not apply to any victim of crime or violence.

Ark. Code Ann. § 11-9-113(a) (1) (Repl. 2002).

The statute continues, stating that "no mental injury or illness ... shall be compensable unless it is also diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in a most current issue of the Diagnostic and Statistical Manual of Mental Disorders. Ark. Code Ann. § 11-9-113(a) (2) .

The Claimant asserts that he is entitled to the 26 weeks of compensation allowed under the statute because he has developed psychological problems stemming from his compensable injury. The Claimant in his brief stated that he began experiencing psychological problems, namely stress, immediately following his injury, and that Dr. Williams acknowledged that the Claimant was receiving treatment for post-traumatic stress disorder related to the eye injury. At the hearing, the Claimant introduced a letter from Dr. Broughton of November 16, 2002 which gave a provisional diagnosis of the Claimant as having "adjustment disorder with depressed mood and relation problem" under Axis 1 of the five-axis format used in the DSM-IV.

The Administrative Law Judge denied the claim for compensability of psychological injury. The Administrative Law Judge states in his opinion that "there is scarce evidence that Dr. Broughton is a licensed psychiatrist or psychologist." At the very beginning of the hearing on

March 20, 2003, the attorney for the Respondent, in evaluating the medical evidence for a psychiatric claim under Section 113, stated, "I believe he has satisfied part of that with this report from Dr. Broughton, in that Dr. Broughton is a certified psychiatrist, and has made, at least a provisional diagnosis, so there is a report from a psychiatrist."

The Respondents appear to have, if not stipulated, at least accepted at the hearing that Dr. Broughton was duly licensed because they did not challenge it or object at the hearing, thus saving it for appeal. Therefore, the Commission finds the Administrative Law Judge's statement that there's scarce evidence in the record that Dr. Broughton is a licensed psychiatrist to be less than factually correct.

The Administrative Law Judge then goes on to analyze the provisional diagnosis from Dr. Broughton. As stated earlier, Dr. Broughton in using the five-axis model under the DSM-IV, made a provisional diagnosis that the Claimant, under Axis 1, has "adjustment disorder with depressed mood, and a relation problem (partner relation)." In looking at the DSM-IV under Adjustment Disorders, it states that "the essential feature of an adjustment disorder is the development of clinically significant emotional or behavioral symptoms in response to an identifiable

psychosocial stressor or stressors. The symptoms must develop within three months after the onset of the stressors (criterion A)." (Emphasis added.) The Administrative Law Judge seemed to focus on the symptoms developing within three months after the onset of the stressors as one reason for finding that the Claimant failed to meet his burden of proof on that issue.

On appeal, the Claimant, as well as the Respondents, discussed mostly the format of Dr. Broughton's report, in that it does match the five-axis model under the DSM-IV. The Administrative Law Judge does not seem to take issue with whether Dr. Broughton's report follows in format with the model set forth in the DSM-IV, but appears to look at the substance of the disorder that has been provisionally diagnosed, i.e. an adjustment disorder, and that the symptoms must develop within three months after the onset of the stressors. The Administrative Law Judge states that at no time did Dr. Broughton render an opinion that the Claimant's psychological diagnosis, even a provisional one, was caused by his compensable eye injury nearly seven years ago. In looking at the evidence in the record, we can find no medical evidence which establishes a sufficient causal link between the Claimant's injury and any possible mental illnesses. The Administrative Law Judge also pointed to the fact that the Claimant has had marital problems in the past

with he and his wife separating on and off several times over the past years as a possible explanation for any psychological problems. Indeed, Dr. Broughton in his psychological report under Axis 1 stated that it was an "adjustment disorder with depressed mood and relation problems (partner relation)."

The Administrative Law Judge also noted that Dr. Broughton noted the presence of other potential stressors, such as a gunshot wound to the Claimant's right hand, chronic lower back pain, and a history of arthritis in the cervical spinal column. Dr. Broughton also noted problems with the Claimant's social environment and occupational environment.

In considering the foregoing, the Administrative Law Judge stated that he could not find that the Claimant has shown by a preponderance of the evidence that he sustained a compensable mental illness or injury under the statute. We agree, based on the language of the statute and the language of the DSM-IV with regard to the specific disorder that Dr. Broughton noted in his provisional diagnosis.

We have looked at the criteria under the specific disorder which Dr. Broughton provisionally diagnosed. According to the DSM-IV, the symptoms must develop within three months of the onset of the stressors. The Claimant's injury was some five years ago. Without more evidence

establishing a causal link between his psychological problems now and his compensable eye injury, we are of the opinion that the Claimant failed to prove by a preponderance of the evidence his entitlement to benefits under Ark. Code Ann. § 11-9-113.

In light of the foregoing, we affirm the opinion of the Administrative Law Judge denying and dismissing the Claimant's appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.