

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F205608

ANGELA C. MAYS, EMPLOYEE	CLAIMANT
HAMILTON HOUSE RESTAURANT, EMPLOYER	RESPONDENT
ARKANSAS HOSPITALITY, CARRIER	RESPONDENT

OPINION FILED MARCH 2, 2004

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

Claimant represented by HONORABLE SHERRI ARMAN McDONOUGH, Attorney at Law, Hot Springs, Arkansas.

Respondent represented by HONORABLE GAIL O. MATTHEWS, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal a decision of the Administrative Law Judge filed on May 21, 2003, finding that the claimant proved by a preponderance of the evidence that she sustained compensable injuries to her left wrist as a compensable consequence of her admittedly compensable injury to her knee. Based upon our de novo review of the record, we find that the claimant has failed to meet her burden of proof. Accordingly, we reverse the decision of the Administrative Law Judge.

The claimant was employed by the respondent employer as a waitress. The claimant testified that on March 27, 2002, she slipped on a recently waxed marble floor. She stated that she landed on her knee and both

hands. The claimant did not report this as a workers' compensation injury and it is not the subject of this claim. The claimant testified that she eventually sought treatment from the emergency room for a swollen and painful left knee. She stated that the swelling eventually went down, her wrists got better and she returned to work.

On April 29, 2002, the claimant slipped on a wet floor in the salad area. Her left knee was swollen and cut as a result of this fall. The claimant testified that her left wrist was also skinned and sore. The claimant sought treatment from the emergency room after this fall. The claimant was referred to Dr. Robert J. Olive, an orthopedic surgeon. She began treating with Dr. Olive on May 2, 2002. She sought treatment from Dr. Olive again on May 20, 2002, June 10, 2002, June 25, 2002, and July 30, 2002, for problems associated with her left knee. Dr. Olive's records do not mention any problems with the claimant's wrist. The claimant underwent physical therapy for her knee after July 30, 2002. The claimant did not return to Dr. Olive until after an alleged incident wherein her knee gave out and she fell on concrete. The claimant contended that this fall caused her left wrist to be so painful that pain medication would not alleviate the pain. However, the claimant did not mention any wrist problems to her physical therapist.

The medical records indicate that the first complaints of any problems with the claimant's wrist was September 16, 2002. Dr. Olive did not order X-rays of the claimant's wrist until October 21, 2002. The claimant testified that she had so much pain radiating from her thumb, wrist and over the top of her hand that she could not function. The claimant was ultimately diagnosed with DeQuervain's tenosynovitis by Dr. Olive and he performed surgery for this condition in December of 2002.

The claimant contends that the problems associated with her left wrist are a compensable consequence of her April 29, 2002 fall. The respondents contends that the claimant cannot prove by a preponderance of the evidence that she sustained an injury to her left wrist on April 29, 2002.

In a workers' compensation case, the claimant has the burden of proving by a preponderance of the evidence that her claim is compensable, i.e., that her injury was the result of an accident that arose in the course of her employment and that it grew out of, or resulted from the employment. Ringier American v. Combs, 41 Ark. App. 47, 849 S.W.2d 1 (1993); Carmen v. Haworth, Inc., 74 Ark. App. 55, 455 S.W.3d 408 (2001). Further, the claimant must prove a causal connection between the work related accident and the

later disabling injury. Bates v. Frost Logging Co., 38 Ark. App. 36, 827 S.W.2d 664 (1992). The claimant must show a causal relationship exists between her condition and her employment. Harris Cattle Co. v. Parker, 256 Ark. 166, 506 S.W.2d 118 (1974).

There is no presumption that a claim is indeed compensable. O.K. Processing, Inc. v. Servold, 265 Ark. 352, 578 S.W.2d 224 (1979). The party having the burden of proof on the issue must establish it by a preponderance of the evidence. Ark. Code Ann. § 11-9-704(c) (2) (Repl.2002). In determining whether a claimant has sustained his or her 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; Wade v. Mr. C Cavanaugh's, 298 Ark. 363, 768 S.W.2d 521 (1989); and Fowler v. McHenry, 22 Ark. App. 196, 737 S.W.2d 663 (1987). Further, it is well established that when the primary injury has been shown to be compensable, the employer is reasonable for any natural consequence that flows from it, the basic test being whether a causal connection exists between the two episodes. Bearden Lumber Co. v. Bond, 7 Ark. App. 65, 644 S.W.2d 321 (1983).

After reviewing the record, we find that the claimant cannot prove by a preponderance of the evidence

that she sustained an injury to her left wrist at the time she sustained the admittedly compensable injury to her knee. We also find that the claimant cannot prove that her left wrist problems were a compensable consequence of her April 29, 2002 injury.

The only evidence in support of a finding that the claimant sustained an injury to her left wrist is the claimant's own self-serving testimony that she continuously had problems with her wrist after the April fall. She also testified that she fell eight-plus times after the April 29, 2002 incident. The claimant failed to mention to Dr. Olive or to the physical therapist that she fell on more than two occasions. There were only two falls mentioned in the medical records. Further, one of these incidents mentioned indicate that the claimant slipped.

The claimant's testimony is suspect at best. The claimant failed to mention any problems with her wrists for over five months after she fell in April 2002. However, the claimant maintained that her wrist was so painful she could not function. We give the claimant's testimony little weight. 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).

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.

The record is void of any medical evidence establishing problems with the claimant's wrist until she reported problems to Dr. Olive at her September 16th visit. Dr. Olive's deposition was taken and he testified that the claimant's DeQuervain's tenosynovitis was hard to relate to the claimant's fall. The following exchange is especially enlightening:

A. In terms of the wrist, she had a problem this is called DeQuervain's tenosynovitis, which is just a fancy medical terms for tendinitis of the wrist.

Q. Is that a overuse syndrome type thing?

A. Yes, sir.

Q. So, if you had that type problem, it'd be hard to relate that back to the April 29th fall, would it not?

A. Somewhat difficult because you would expect, even if it was a result of trauma that you would begin to see something fairly soon.

Q. And, we're talking about five months

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A. Yes, sir.

Q. That would be a long period, right?

A. Yes, sir.

We give great weight to Dr. Olive's opinion. The Commission has the authority to accept or reject a medical opinion and the authority to determine its probative value, Poulan Weed Eater v. Marshall, 79 Ark. App. 129, 74 S.W.3d 878 (2002). The Commission may accept only those portions of testimony that it determines are worthy of belief. Tucker v. Roberts-McNutt, 342 Ark. 511, 29 S.W.3d 706 (2000). Furthermore, it is well established that it is within the Commission's province to weight all the medical evidence and to determine what is most credible. Smith Blair, Inc. v. Jones, 77 Ark. App. 273, 280, 72 S.W.3d 560 (2002). The Commission is entitled to review the basis for a doctor's opinion in deciding the weight and credibility of the opinion and medical evidence. Id.

Therefore, after we consider the fact that the claimant failed to report any problems with her wrist for over five months after her April 29, 2002, fall, the fact that Dr. Olive related the claimant's problems to overuse and the fact that the claimant lacks credibility, we find

that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her left wrist.

Accordingly, for those reasons set forth above, the decision of the Administrative Law Judge should be and is hereby reversed. Therefore, this claim is denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. McKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

I must respectfully dissent from the opinion of the majority finding that claimant is not entitled to benefits for an injury to her left wrist. I agree with the Administrative Law Judge, who heard the live testimony and observed the demeanor of the witnesses, that claimant's testimony is credible.

Claimant testified that after the work-related falls in March and April 2001, she re-injured her wrist on numerous occasions when she fell as a result of her knee

giving way. At first, the knee pain overshadowed any wrist discomfort, which would "go away" fairly quickly. Her wrist difficulties would also respond to the medications prescribed for her knee. Claimant did not actually sustain a "compensable" injury to her wrist requiring medical services or resulting in any disability until the fall in September 2002. When claimant's wrist pain and swelling did not resolve after this injury, she sought treatment and asserted a claim for a work-related injury. Claimant is being penalized by this Commission for not being (1) a habitual complainer, (2) a frequent claims filer, and (3) a person who makes unnecessary trips to the doctor.

Claimant has proven by a preponderance of the evidence that her left wrist condition is a compensable consequence of her left knee injury. Claimant's testimony is not inconsistent with Dr. Olive's statement that tendinitis is generally an over-use syndrome. The evidence indicates that claimant's problems worsened gradually as a result of the numerous falls. Accordingly, the opinion of the Administrative Law Judge should be affirmed. Therefore, I must respectfully dissent.

SHELBY W. TURNER, Commissioner