

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F307136

TERESA OVERSTREET, EMPLOYEE	CLAIMANT
PONTIAC COIL, INC., EMPLOYER	RESPONDENT
LIBERTY INS. CORPORATION, CARRIER	RESPONDENT

OPINION FILED NOVEMBER 2, 2004

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

Claimant presented *pro se*.

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

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondent's appeal a decision by the Administrative Law Judge finding that the claimant proved by a preponderance of the evidence that she sustained a compensable injury on May 8, 2003. Based upon our de novo review of the record, we reverse the decision of the Administrative Law Judge.

The claimant was cleaning and straightening shelves for the respondent employer on May 8, 2003. She climbed a 4-foot ladder, and was climbing back down when she missed the bottom step and fell against a shelf. The claimant cut her finger and scratched her arm. The claimant's supervisor and co-worker provided the claimant

first aid immediately after the fall. The claimant did not fill out an accident report. The reports that were prepared by the claimant's supervisor and co-worker were prepared approximately two months after the incident. Those reports indicated that the claimant's cuts and scratches were treated with antibiotic ointment and band-aids.

Approximately two months after this incident the claimant sought medical treatment from Westside Family Clinic. She saw Ms. Vondran, a nurse practitioner. The claimant was ultimately referred for physical therapy. The record contains a letter from Searcy Physical Therapy from, Steve Joseph, the physical therapist that performed physical therapy on the claimant, sent to Dr. Killough, at Westside Family Clinic, with a treatment plan. There is also a letter dated September 12, 2003, from Mr. Joseph telling Ms. Vondran that the claimant has completed a course of physical therapy. The record also contains a radiology report from the MRI which stated that the claimant had no abnormalities and it was a normal MRI.

The claimant contended that she had problems with her shoulder and thoracic spine that were a result of the May 8, 2003, incident. The respondents contend that the claimant did not have a compensable injury on May 8, 2003.

More specifically, the respondents contend that the claimant cannot support her contentions with any objective findings. We agree with the respondents.

Ark. Code Ann. §11-9-102(4) (A) (i) (Repl. 2002) defines "compensable injury" as "[a]n accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is 'accidental' only if it is caused by a specific incident and is identifiable by time and place of occurrence." Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002). The phrase "arising out of the employment refers to the origin or cause of the accident," so the employee was required to show that a causal connection existed between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). An injury occurs "'in the course of employment' when it occurs within the time and space boundaries of the employment, while the employee is carrying out the employer's purpose, or advancing the employer's interest directly or indirectly." City of El Dorado v. Sartor, 21 Ark. App. 143, 729 S.W.2d 430 (1987). Under the statute, for an accidental injury to be compensable, the

claimant must show that he/she sustained an accidental injury; that it caused internal or external physical injury to the body; that the injury arose out of and in the course of employment; and that the injury required medical services or resulted in disability or death. Id. Additionally, the claimant must establish a compensable injury by medical evidence, supported by objective findings as defined in §11-9-102(16). Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000). The injured party bears the burden of proof in establishing entitlement to benefits under the Workers' Compensation Act and must sustain that burden by a preponderance of the evidence. See Ark. Code Ann. § 11-9-102(4)(E)(i)(Repl. 2002); Clardy v. Medi-Homes LTC Servs., 75 Ark. App. 156, 55 S.W.3d 791 (2001).

In Bennett v. City of Benton, Full Commission Opinion dated August 14, 1996 (Claim No. E500506), the Commission stated:

The proposition that a party bringing a claim must establish every element required to establish such a claim in order to prevail is an elementary concept of law. Certainly, proof of the facts necessary to establish certain elements can be provided by the stipulations of the parties, and, where

evidence related to an element is un rebutted, the element may be established with only minimal evidence. However, the party opposing the claim is not required to specifically challenge every element of a claim in order to bring the element into issue. Instead, by challenging the claim, the opposing party brings every element of the claim into issue and imposes the burden of establishing each element of the claim on the party bringing the claim. This is such an elementary tenet of the law that the claimant in the present claim cannot be heard to claim surprise by its application, as he suggests. Furthermore, the claimant cannot be heard to complain that he did not know the elements of the compensability under the amended law since these elements are contained in the statute itself.

There is no doubt that there was an incident that happened on May 8, 2003. Frances Martin, the claimant's supervisor and Mavis Coulson, her co-worker, both filed accident reports stating that they had helped the claimant up off the floor and treated some cuts and scrapes with a wet towel, antibiotic ointment and band-aids. However, there is no objective medical evidence that the claimant sustained any injuries to her neck and shoulder as a result of this accident. The law requires that the claimant prove by a preponderance of the evidence that she sustained an injury arising out of and in the course of her employment. The law further requires that the injury has to cause internal or

external harm to the body which requires medical services, and that medical evidence has to be supported by objective findings. The record is simply void of any medical evidence which is supported by objective findings.

The claimant offered the testimony of her daughter and friend to establish objective medical findings. The daughter and friend stated that they observed bruising on the claimant "underneath her arm on the backside and on her thigh" after this incident at work. The claimant testified that the bruises had disappeared by the time she actually saw a doctor for her injuries. There is no medical evidence in the record as to the cause of the bruises or of the injuries underlying the bruises.

The Administrative Law Judge found that the observation of bruising by the claimant's daughter and friend was enough to establish that the claimant sustained a compensable injury supported by objective findings. The Commission is strictly prohibited from broadening the scope of the workers' compensation laws under the provisions of Ark. Code Ann. § 11-9-1001. Specifically, this section of the statute states:

In the future, if such thing as the statute of limitations, the standard of review by the workers' compensation commission or courts, the extent to

which any physical condition, injury, or disease should be excluded from or added to coverage by the law, or the scope of the workers' compensation statutes need to be liberalized, broadened, or narrowed, those things shall be addressed by the general assembly and should not be done by the Administrative Law Judges, the workers' compensation commission, or the courts.

Further, the Commission is required, under the provisions of Ark. Code Ann. § 11-9-704(c) (3) to strictly construe the statute. In Lawhon Farm Services v. Brown, 335 Ark. 272, 984 S.W.2d 1 (1998) the Supreme Court stated:

Strict construction means narrow construction. Arkansas Conference Seventh Day Adventists v. Benton City Board of Equalization, 304, Ark. 95, 800 S.W.2d 426 (1990), and Thomas v. State, 315 Ark. 79, 864 S.W.2d 835 (1993), we wrote that strict construction requires that nothing to be taken as intended that is not clearly expressed. The doctrine of strict construction is to use the plain meaning of the language employed. Holaday v. Fraker, 323 Ark. 552, 915 S.W.2d 280 (1996). Even when statutes are to be strictly constructed, however, they must be construed in their entirety, harmonizing each subsection where possible. MenArk Pallet Co. v. Lindsey, 558 Ark. App. 309, 950 S.W.2d 468 (1997).

In harmonizing 11-9-704(c) (3) and 11-9-102 (4) (D) and (16) together, the strict construction mandate, the

requirement that a compensable injury be established by medical evidence supported by objective findings, plus the definition of objective findings, we cannot find that the claimant has established the existence of a compensable neck and shoulder injury by objective medical evidence. In our opinion the testimony offered by the claimant, the claimant's daughter, and the claimant's friend is not sufficient to establish objective medical evidence. The law requires medical evidence not simply objective findings. In our opinion, observations by these lay persons of bruising to the back and thigh does not satisfy this statutory requirement.

In Freeman the Court stated that muscle spasms were objective medical findings as noted by a physical therapist. A physical therapist is a trained medical professional. In this case, the claimant's daughter and her friend are not trained medical professionals. Moreover, these witnesses did not offer any evidence of an injury to that part of the body claimant now claims to have injured.

In the case of Cooper v. Bill Wingo Masonry Co., Full Commission Opinion filed March 6, 1997, Claim No. E513144, the Commission found that a lack of medical evidence in the record substantiating or corroborating the

claimant's testimony was not enough to prove that the claimant sustained a compensable injury. In the Cooper case, the claimant got into a physical fight and had some injuries to his face. At the hearing, the claimant did not introduce any medical records into the hearing. The Commission found that because there was no medical evidence in the record, the claimant failed to prove that he sustained a compensable injury. This is precisely the same facts as we have in the case before us now. The claimant in this case has failed to put any medical evidence into the record substantiating that she had any sort of injury to her neck or shoulder. All we have is the claimant's self-serving testimony as well as the testimony of her daughter and a friend of some observations of bruising to other parts of her body almost two months prior to the claimant seeking medical treatment. There is no medical evidence presented as to the cause of the bruises or the injuries underlying the bruises. Simply put, there is no medical evidence supported by objective findings of injury in the record.

After conducting a de novo review of the record, we find that the claimant has failed to prove by a preponderance of the evidence that she sustained a

compensable injury. Accordingly, we reverse the decision of the Administrative Law Judge.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.