

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F302606

LESLIE PURDY, EMPLOYEE	CLAIMANT
LITTLE ROCK SCHOOL DISTRICT, EMPLOYER	RESPONDENT
ARKANSAS MUNICIPAL LEAGUE, CARRIER	RESPONDENT

OPINION FILED September 24, 2004

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

Claimant represented by HONORABLE ROBERT CORTINEZ, II, Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE J. CHRIS BRADLEY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondent appeals the decision by the Administrative Law Judge finding that the claimant proved by a preponderance of the evidence that she sustained a compensable injury. 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 chemistry teacher. On December 2, 2002, she was trying to retrieve a make-up test from her metal filing

cabinet in her class room when the filing cabinet fell over on her. The claimant tried to push the filing cabinet off of her but was unable to. Two students lifted the cabinet off of her and the school administrator called for an ambulance. The claimant was treated at the emergency room for a contusion and given a return to work slip allowing her to be off work for one week. The claimant returned to work sooner than the one-week the doctor told her to be off because she could not leave her students with a substitute teacher. She preferred to be there with them. The claimant testified that "as soon as I could tolerate standing up", she returned to the classroom. The claimant treated her pain with a heating pad and alternated with ice. The claimant contended that she continued to experience radicular pain in both legs.

The evidence demonstrates that at the time of her work-related injury, the claimant was receiving treatment from Dr. Lawrence Ault for back pain. Dr. Ault performed a lumbar epidural steroid injection on February 14, 2003. The claimant became dissatisfied with Dr. Ault and sought treatment from Dr. Thomas Moore, who referred her to Dr. Thomas Ward.

The evidence reflects that the claimant has an extensive history of low back pain. The claimant had a rock climbing incident in 1998, when she fell on her lower back. Her back problems had also been exacerbated by a significant weight gain. She had successfully lost 90 lbs. prior to this incident. The claimant testified that the leg-pain intensified since the work injury.

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).

The claimant must establish an injury with objective findings. In order to prove a compensable injury, a claimant must prove, among other things, a causal relationship between his employment and the injury.

McMillan v. U.S. Motors 59 Ark. App. 85, 953 S.W.2d 907

(1997). Objective medical evidence is necessary to establish the existence and extent of an injury, but not essential to establish the causal relationship between the injury and a work-related accident. Horticare Landscape Mgt. v.

McDonald, 80 Ark. App. 45, 89 S.W.3d 375 (2002). Objective

findings are defined at Ark. Code Ann. § 11-9-102(16) as those findings which cannot come under the voluntary control of the patient. When the Commission determines physical or anatomical impairment, complaints of pain, straight-leg raising tests, or active range of motion tests shall not be considered objective findings. Further, medical opinions addressing compensability and permanent impairment must be stated within a reasonable degree of medical certainty.

Objective medical evidence is not essential to establish the causal relationship between the injury and a work-related accident where objective medical evidence establishes the extent and existence of the injury, and a preponderance of other non-medical evidence establishes a causal relation to a work-related incident. McDonald, supra.

A review of the evidence demonstrates that the claimant cannot prove by a preponderance of the evidence that she sustained a compensable injury. The record is clear that the claimant has not had any new physical problems since before the incident of December 2, 2002. Any physical problems after December 2, 2002, were merely a continuation of her previous condition. Here, only Dr. Moore's subjective statement which relied on the erroneous belief that the claimant has never had complaints of pain in her right leg support the contention that her problems since December 2, 2002, were caused by the work related incident. Dr. Moore failed to point to any objective findings of a new injury to support his contention. Dr. Ward's letter simply stated his conclusions from a review of incomplete medical records without connecting them to any complaints by the claimant. The narrowing of the canal at L3-4 was continuing

degeneration of the claimant's back condition. The medical evidence in the record indicated that the claimant's symptoms were the consequence of her pre-existing condition. There was no evidence of a new injury that aggravated and accelerated or combined with the pre-existing injury. Rather, the medical evidence shows no new objective findings. Simply put, the claimant has fallen short of her burden of proof.

The record is void of any complaints by the claimant of any right leg pain to her regular treating physicians after December 2, 2002. The only notation in the record of right leg pain was almost twelve weeks after her work-related incident and the notation was in the MRI report. In order to accept that the 2003 MRI was taken in response to complaints of right leg pain, the lack of any complaints in the record leading up to that date notwithstanding, it must also be accepted that the 2000 MRI was taken in response to complaints of right leg pain. This runs counter to the claimant's contention and the Administrative Law Judge's findings that any problems to her right leg were new. Additionally, the claimant's testimony that she now suffers from right side back pain, in addition

to right leg pain, is unsupported by the medical evidence. There is no notation in the medical records of any complaints on the right side of her back after December 2, 2002. The record establishes the claimant had right side pain prior to the incident at work and that after that incident she had predominant left leg and left side pain with occasional complaints of transient pain.

Therefore, after our de novo review of the record, we cannot find that the claimant has proven by a preponderance of the evidence that she sustained a compensable injury. Accordingly, we reverse the decision of the Administrative Law Judge. This claim is denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

MIKE WILSON, Special Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____ I respectfully dissent from the Majority opinion.

I find that the Administrative Law Judge correctly found that the claimant, a high school teacher, proved by a preponderance of the evidence that she sustained a compensable injury when a metal cabinet fell on her in her classroom on December 2, 2002. Claimant had previously received treatment for a preexisting back injury that predominantly caused pain in her left leg. At the emergency room, Claimant originally complained of pain in her left hip and back. However, she testified that the injury caused pain that radiated everywhere, including her back and *both* legs.

Respondents accepted the claimant's claim as compensable but controverted the claim on March 22, 2003 after receiving a February 20, 2003 MRI report that was undertaken for pain to both of her legs. The claimant's MRI report clearly serves as objective medical evidence that claimant sustained a new injury. In fact, the MRI revealed an L3-4 disc bulge, a significant annular tear and new findings at L5-S1 that were not present in a April 29, 2002 MRI report that was performed based on claimant's complaints

of left leg pain. The Administrative Law Judge correctly considered the new objective findings that claimant had a new bulge at L3-4, a significant annular tear, and changes at L5-S1 including disc protrusion.

Likewise, the claimant's injury is supported by medical testimony by both of her primary treating physicians, Dr. Thomas Moore and Dr. Thomas Ward. Both physicians opined to a reasonable degree of medical certainty that claimant's injury was work related.

The Majority stated that Claimant has had no physical problems since the work-related incident and that the record is void of any complaints of right leg pain. However, the Majority overlooked a summary report dated April 7, 2003 from Claimant's treating physician, Dr. Moore, in which he states that he is writing to "clear up an issue" regarding Claimant's workers' compensation claim. Dr. Moore stated that, "as her attending physician, I would certainly consider her right lower extremity problems to be clearly related to this incident." This report was in direct response to Respondent's arbitrary decision to controvert benefits once the severity of claimant's injury became known. The Respondent did not depose Dr. Moore or Dr. Ward.

Therefore, their opinions are uncontradicted and must be relied upon as opinions stated to a reasonable degree of medical certainty.

I find that the Administrative Judge was correct in his finding that Claimant has proven by a preponderance of the evidence that she sustained a compensable injury and that she is entitled to payment of her medical expenses incurred to date and to future medical treatment.

SHELBY W. TURNER, Commissioner