

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F211881

CHARLENE STROUD,
EMPLOYEE

CLAIMANT

ARKADELPHIA HUMAN DEVELOPMENT CENTER,
EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS,
INSURANCE CARRIER

RESPONDENT

OPINION FILED NOVEMBER 2, 2004

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

Claimant represented by HONORABLE C. BURT NEWELL, Attorney
at Law, Hot Springs, Arkansas.

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

Decision of the Administrative Law Judge: Affirmed and
adopted.

OPINION AND ORDER

The respondents appeal from a decision of the
Administrative Law Judge filed December 11, 2003. The
Administrative Law Judge entered the following findings of
fact and conclusions of law:

1. Employer/employee relationship existed on
October 2, 2002.
2. The temporary total disability rate is \$174
and the permanent partial disability rate is
\$155.
3. The claimant has proven by a preponderance of
the evidence that she sustained a compensable

injury arising out of and in the course of her employment and supported by objective findings.

4. The respondents are responsible for additional reasonable and necessary medical the claimant has pursued.
5. The claimant has proven by a preponderance of the evidence that she remained in her healing period and was unable to earn wages from October 3, 2002 through March 3, 2003.

We have carefully conducted a de novo review of the entire record herein, and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct, and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal. All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715(Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I respectfully dissent from the majority's opinion finding that on October 2, 2003, the claimant sustained a compensable injury arising out of and in the course of her employment with the respondent employer. The claimant was awarded additional reasonable and necessary medical treatment and total temporary disability benefits from October 3, 2002, through March 3, 2003.

On October 2, 2002, the claimant was working in the maintenance and laundry department of a residential treatment facility, where she had been employed for approximately four years. The claimant testified that her back was hurting when she arrived at work that morning, but that later she was pulling some wet "tangled" laundry from a washing machine when she experienced a sudden onset of pain in her back and hip, and numbness in her left leg. The claimant reported the incident to the front office, and later that same day she was seen by Dr. Michael R. Ford. An X-ray of the claimant's back was unremarkable, so Dr. Ford assessed the claimant with lumbosacral strain with evidence of radiculopathy. Dr. Ford prescribed the claimant anti-inflammatory and pain medications and he took her off work for a week. As of October 15, 2002, Dr. Ford reported that the claimant was doing "reasonably well," but due to her continued complaints of pain, he took her off of work for an additional week and referred her to physical therapy. By October 22, 2002, the claimant's back pain showed no subjective signs of improvement and she was now complaining of shoulder pain, so Dr. Ford referred her to Dr. Kevin McLeod for consultation. The claimant remained off of work, per the doctor's orders, during that time.

On November 2, 2002, Dr. McLeod examined the claimant. On her Back Pain Patient History Form provided by Dr. McLeod, the claimant reported that she was experiencing pain and spasms in her back, hip, and leg down into her foot causing it to go numb. The claimant did not specify which leg she was having problems with, but in that same questionnaire, the claimant reported having had leg pain for "several years." The results of an MRI of the claimant's lumbar spine performed by Dr. McCleod on November 4, 2002, were "completely normal," and Dr. McCleod diagnosed the claimant with lumbago.

Dr. Ford continued to treat the claimant for back, leg, and shoulder pain through March 19, 2003, at which time he referred her to Dr. Wayne L. Bruffett at Arkansas Specialty Orthopaedics. In a letter to the claimant's attorney dated June 26, 2003, Dr. Bruffett stated:

To the best of my knowledge, Ms. Stroud did not have a history of back problems prior to her work-related incident that occurred on 10/2/02. If this is indeed the case, then I would say that her complaints of pain and the need for subsequent treatment are based on her work injury. This is stated within a reasonable degree of medical certainty.

I do think that the physical damage from the injury was the major cause of her need for current treatment.

It does not appear that she sustained a severe injury and I doubt that she would have any type of long-term impairment from this, but I do certainly think that she injured her back and did seek subsequent medical treatment for this. (Emphasis added)

In April of 2003, the claimant presented to Dr. Jacob E. Abraham, who wrote to the claimant's counsel on August 7, 2003, the following:

As you are aware, this is a 52-year old female who presented to me on April 29, 2003, with a complaint of lower back pain which radiates into the legs. . . . Her symptoms apparently started with an on the job injury on October 2, 2002, while pulling clothes out of a washer. On physical examination, positive straight leg raise was noted in addition to decreased sensation to light touch and pin prick in the left leg. Her MRI scan did reveal degenerative disc disease which is very clearly a pre-existing condition.

Dr. Abraham opined that the claimant's pre-existing condition was "exacerbated" by her "on the job injury." Dr. Abraham further opined that the claimant's "industrial injury" is the major cause of her present complaints. At that time, Dr. Abraham treated the claimant with two epidural steroid injections and lumbar facet joint injections.

Per request of the claimant's case manager, orthopedic surgeon, Dr. Earl Peeples, reviewed the claimant's medical records and radiographs. Based solely upon his review of the records, in a letter dated July 8, 2003, Dr. Peeples made the following relevant comments:

Thus the patient's diagnosis is the most common one in individuals with low back symptoms. That is, low back pain without an identified anatomic abnormality or cause. This category, usually associated with lifting or other activities, is based on soft tissue injury and typically resolves in 2-3 months. ... The patient's current symptoms are by history related to an accident of approximately eight months ago. These symptoms are not supported by any anatomic finding in the record or in the radiographs. Her most recent MRI study is normal with slight anatomic variations and slight disc hydration changes consistent with her age. ... To summarize, neither MRI documents any "injury" and there certainly is no progression as both studies are normal.

Dr. Peeples recommended psychological profile testing be performed on the claimant and that she continue to be treated with conservative measures "only."

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," thus the employee is required to show that a causal connection exists between the injury and the employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). 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).

In the present claim, the claimant asserts that she injured her back at work to such a degree that regular conservative treatment, which includes physical therapy, has not been effective in resolving her ongoing symptoms. However, as Dr. Peeples points out above, the claimant's symptoms are not supported by any anatomic finding. Moreover, the claimant admitted that her back was hurting when she arrived at work on the morning of October 2, 2002,

prior to her alleged injury. Furthermore, although the claimant contends that she has no history of back problems prior to her work-related injury, the record reveals that she was being treated by Dr. Ford for chronic left leg pain in August of 2002. By her own admission, the claimant has experienced pre-injury leg pain for "several years."

Coincidentally, left leg pain continues to be one of the claimant's chief complaints subsequent to her alleged back injury. For example, during her hearing of October 31, 2003, the claimant testified as follows concerning her leg problems:

I can't even lay - There's part of my left hip that I can't lay on; I can't sit on.

When asked about the occurrence and location of alleged muscle spasms, the claimant responded...

Mostly at night, when I'm asleep, my legs. It's not my back; it's mostly my legs.

The claimant later described her leg problem as "restless leg syndrome," but she could not offer an explanation as to the meaning of that term. When exploring this topic further on cross-examination, the claimant admitted that she has been taking Darvocet for this

condition for an extended period of time, and that she is now concerned about developing a pain related drug dependency due to her current symptoms. Furthermore, although the claimant contends that her injury is evidenced by the fact that she has experienced muscle spasms in her back from the onset, the claimant's first objective clinical finding of muscle spasms occurred some five months after her work-related incident. Moreover, the claimant testified that the spasm-like symptoms that she currently experiences are in her left leg rather than in her back. Therefore, as the respondent contends, it is unreasonable to conclude that the claimant's ongoing symptoms are resultant from the claimant's alleged injury of October 2, 2002.

In his Opinion, the Administrative Law Judge assigned more weight to the opinions of the claimant's treating physicians than to the opinion of Dr. Peeples. Indeed, the Commission has the authority to resolve conflicting evidence and this extends to medical testimony. Foxx v. American Transp., 54 Ark. App. 115, 924 S.W.2d 814 (1996). Moreover, the Commission is entitled to review the basis for a doctor's opinion in deciding the weight of the opinion. Id. There is no requirement that medical testimony be expressly or solely based on objective findings, only

that the record contain supporting objective findings.

Swift-Eckrich, Inc. v. Brock, 63 Ark. App. 118, 975 S.W.2d 857 (1998). Although the Commission is not bound by medical testimony, it may not arbitrarily disregard any witnesses's testimony. Reeder v. Rheem Mfg. Co., 38 Ark. App. 248, 832 S.W.2d 505 (1992). Finally, the Commission is not bound by a doctor's opinion which is based largely on facts related to him by claimant where there is no sufficient independent knowledge upon which to corroborate the claimant's claim. Roberts v. Leo-Levi Hospital, 8 Ark. App. 184, 649 S.W.2d 402 (1983).

A close examination of the various medical opinions presented in this claim reveals that the opinions of Dr. Bruffett, a neurosurgeon, and Dr. Peeples, an orthopaedic surgeon, are somewhat consistent. For instance, Dr. Bruffett, the claimant's treating neurosurgeon, opined that the claimant's injury was not severe and that long-term impairment therefrom is "doubtful." Likewise, based upon his review of the claimant's entire medical record, Dr. Peeples opined that the claimant had sustained a soft tissue injury which should have resolved within a 2-3 month period of time. Additionally, Dr. Peeples stated that "by history," the claimant's symptoms are injury related, while Dr.

Bruffett stated that, "to the best of [his] knowledge," the claimant "did not have a history of back problems prior to her work-related incident." (Emphasis added) Likewise, the claimant's latest treating physician, Dr. Abraham, speculated that the claimant's current symptoms are injury related when he stated, "Her symptoms apparently started with an on the job injury on October 2, 2002,"

(Emphasis added)

None of the claimant's treating physicians were able to find an anatomical explanation for the claimant's continuing complaints of worsening symptoms. This is consistent with the opinion of Dr. Peebles that no anatomical reason for the claimant's ongoing symptoms exists. Furthermore, Dr. Peebles has suggested that the claimant may benefit from a psychological evaluation. This contention is supported by the claimant's testimony wherein she stated that she is "just miserable all of the time."

The claimant, now in her mid-fifties, testified that she has worked "all of her adult life" and at "several different places" prior to her employment with the respondent employer. For example, the claimant has worked as a cook, and as a maid in hotels. The claimant also testified

that she cared for her disabled husband for years prior to his death.

The claimant had pre-existing leg problems, for which she was under a doctor's care and taking medications, prior to her alleged back injury of October 2002. The claimant's chief complaint since her alleged back injury has been pain and spasms primarily in her left leg. The claimant arrived to work on the morning of October 2, 2002, complaining of back pain. Moreover, and more importantly, the claimant did not present with objective medical findings of back related problems, namely spasms in her back, until some five months after her alleged back injury. Arguably, had the claimant sustained a soft tissue back injury, her symptoms should have resolved within no longer than three months afterwards. From the date of her alleged back injury, all of the claimant's objective medical tests have been normal, showing no anatomical reason for her worsening symptoms. Furthermore, although both Dr. Abraham and Dr. Bruffett opined that the claimant's symptoms are due to her back injury, they both did so based upon the assumption that the claimant had no pre-existing back problems and that she in fact injured herself on the job. Again, the record is devoid of any objective medical evidence that the claimant

injured her back on such date and time as claimed. However, the objective medical evidence does support a conclusion that the claimant had pre-existing degenerative disc disease consistent with her age and prior activities. The objective medical evidence also supports a conclusion that the claimant has a severe pre-existing chronic leg condition that will continue to cause her pain and problems.

In conclusion, I find that the claimant has failed to establish by a preponderance of the evidence that she sustained an injury to her back on October 2, 2002, while employed for the respondent employer. Therefore, the compensability of this claim and all associated benefits should be denied.

Accordingly, for those reasons set forth above, I respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner