

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F302852

SHIRLEY A. TAYLOR, EMPLOYEE	CLAIMANT
CASTINO INDUSTRIES, INC., EMPLOYER	RESPONDENT
AMERISURE INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED JUNE 17, 2004

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

Claimant represented by HONORABLE JOHN BARTELT , Attorney at Law, , Arkansas.

Respondent represented by HONORABLE JOHN D. DAVIS, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed August 21, 2003.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. There was an employer-employee relationship on March 7, 2003.
2. The compensation rate will be agreed to by the parties if the claim is found to be compensable.

3. The claimant's slip and fall in the bathroom on March 7, 2003, is not excluded from the definition of compensable injury under Ark. Code Ann. §11-9-102(4) (B) (iii).
4. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury arising out of and in the course of her employment on March 7, 2003.
5. The respondents are responsible for medical expenses provided by Dr. Lancaster at the direction of the employer.

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.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____ I must respectfully dissent from the Majority opinion affirming the denial of benefits to Claimant. After conducting a de novo review of the record, I find that Claimant is entitled to compensation because the preponderance of the evidence shows that Claimant's injuries are causally connected to the fall in Respondent's restroom and there are objective findings of injury.

Claimant, age 20, testified that she worked as a machine operator and parts inspector for Respondent. Claimant testified that on Friday, March 7, 2003, she "was walking out of the bathroom stall and went to the sink to wash my hands. But before I got to the sink, I slipped and I

fell...My feet came out from under me, and I fell on my back. And I went to reach for the sink, and I twisted and fell flat on my back." She described her pain immediately following the fall as follows: "It was my whole left leg and my lower back were in extreme pain. I didn't, I could hardly stand up when I went to stand up. I just, my, my leg didn't want to hold any weight at all." It is undisputed that Claimant reported the fall to her supervisor, Chris Winfrey, immediately after the event and that Winfrey did not report this injury to Human Resources or advise Claimant to do so. Claimant testified that she worked the rest of her shift because Winfrey told her to finish her shift since it was almost over.

Claimant testified that she was in severe pain and basically bedridden on Saturday. She testified that she stayed at home all day on Saturday and on Sunday morning but went to her sister's home for a few hours on Sunday afternoon. Claimant testified that her sister had asked Claimant to clean her home over the weekend for \$40. Claimant testified that she went to visit her sister on Sunday for a few hours, but did not clean her sister's home.

Dorothy Blevens and Jennifer Reed, two of Claimant's former co-workers, testified at the hearing. Blevens testified that on Monday, March 10th, Claimant told her that "she had cleaned her sister's house Saturday and Sunday and that she was only paid \$40 for cleaning her sister's house." Blevens also admitted that she couldn't remember any conversations that she had with any supervisory personnel between March 10th and March 21st concerning Claimant and that she "couldn't even tell you what happened last week." Jennifer Reed testified that Claimant told her that she had "got hurt that Friday night, but she said she cleaned her sister's house Saturday and Sunday." She further testified that she knew Claimant to be in good health and did not have a problem with either of her legs or ever miss work because of a leg problem. Reed and Blevens also confirmed that they had signed the following statement dated March 21, 2003, which was written by and also signed by Tina Douglas:

Dorothy Blevens and Jennifer asked to speak with Gary and I regarding Shirley Taylor.

Shirley said she slipped and fell in Castino's bathroom on 3-7-03. She came to

work on 3-10-03 and complained to Dorothy and Jennifer about her knee hurting and cleaning her sisters house Saturday and Sunday (march 8th and 9th) and only got paid \$40.

On Monday, March 10th, Claimant was assigned to a work station that required her to stand up during the entire shift. Claimant completed her shift on Monday, but testified that her pain had escalated by the end of the day. On Tuesday, March 11th, on the advice of a co-worker, Claimant reported her injury to Tina Douglas in Respondent's Human Resources office. Douglas completed the First Report of Injury, which states that the accident occurred in the Ladies Restroom and that "Shirley was walking toward sink-slipped and fell. Shirley's bad knee possibly give to make her fall." Douglas testified that she had never known Claimant to have problems with her left knee or to favor her left knee while working. Claimant testified that she did not know the cause of her fall, but, at the time, assumed that it was her knee that made her fall even though she has never been treated for knee problems.

Claimant testified that after informing Douglas of her injury that she met with the plant manager, Gary Salard,

Douglas, and Winfrey. Salard testified that he was informed at the meeting that Claimant reported her injury to Winfrey on the proceeding Friday and that he reprimanded Winfrey for failing to report the incident. Winfrey also testified that Claimant reported to him on Friday that she fell in the restroom. Winfrey also stated that he "asked her if there was any water on the floor. And she said, no, that she, basically took it as she was clumsy, fell over her own two feet kind of thing. So I didn't make anything out of it. Asked her if she was all right, and she said, yeah, she'd be fine and work the rest of the night."

Claimant testified that after the meeting that Douglas then sent her to Dr. Lancaster at the Lawrence County Family Clinic. Dr. Lancaster's notes on March 11, 2003, describe the history of Claimant's injury as follows: "Walking out of bathroom & slipped on floor, fell & hurt L. knee & lower back. Now hurting R knee because of all wt. on R leg." Dr. Lancaster also notes that x-rays show narrowing in the L5-S1 area and in the left knee joint. Dr. Lancaster released Claimant to return to work with restrictions of no prolonged standing and no lifting over five pounds and

scheduled her for another office visit the following week. Claimant testified that Dr. Lancaster told her that if the pain was too extreme that she should go home. Claimant returned to work after the appointment with Dr. Lancaster, but went home early due to the pain she was experiencing.

On March 12, 2003, Dr. Lancaster noted that Claimant complained of lower back pain and poor bladder control. Dr. Lancaster, therefore, ordered an MRI of the lumbar spine and released Claimant from work. An MRI was taken of Claimant's lumbar spine on March 15, 2003 and evidenced acute injury to Claimant's spine:

...Degenerative disc at the level of L5-S1. Correlation with axial imaging shows a degenerative bulging annulus at the level of L5-S1 **with a small central HNP**. There is probably some mild stenosis at the lateral recesses bilaterally that could place mild pressure on the descending S1 rootlets. **This central HNP is slightly excentric [sic] to the left and the stenosis of the left lateral recess is probably slightly more severe and may place more significant pressure on the left S1 rootlet...**

(emphasis added).

On March 18, 2003, Dr. Lancaster diagnosed Claimant with an HNP at L5-S1 and left sciatica.

Dr. Lancaster's notes on March 18, 2003, reference the MRI results as follows: "MRI- L5-S1, HNP L comp." He notes that Claimant continues to complain of pain and that there is no significant change in her subjective complaints. He recommends pain medication and that she not return to work until after she has had a neurosurgical evaluation. In the "Limitations" portion of the evaluation, Dr. Lancaster wrote "no work" until "seen by neurosug."

Claimant testified that she has not received medical treatment for her injuries since Respondents controverted her claim shortly after Dr. Lancaster's March 18th evaluation. She further testified that she has not returned to work since the fall and had never received treatment for back or knee problems prior to the fall. Claimant testified as follows regarding her current physical condition:

Q: What physical condition are you in right now?

A: As far as pain and stuff?

Q: As far as pain, yeah. I'm sorry.

A: Some days, if I rest all day and don't get up and don't do, don't move around at all, I can, you know,

I can walk a little bit where I'm okay and I don't look like I'm hunched over or nothing. But pretty much most of the time, unless I'm taking a lot of prescription pills, I'm in, my back and my leg are in pain. If I stand up for a little bit of an extended time, my left leg will, will try to give out on me and I won't be able to use it. I can't put any weight on it.

Q: Have you seen any doctors since you saw Dr. Lancaster?

A: No, I haven't.

Q: Why is that?

A: Because with me being off work and having no way to pay for it, they won't let me in and bill it. I have to pay up front 'cause I have no insurance.

The issues on appeal are whether Claimant's injury is causally connected to her fall on Friday, March 7, 2003, and whether the injury is supported by objective findings. The parties have not appealed the Administrative Law Judge's finding that Claimant's "slip and fall in the bathroom on March 7, 2003, is not excluded from the definition of compensable injury under Ark. Code Ann. § 11-9-102(4)(B)(iii)."

It is the function of the Commission to determine credibility of witnesses and the weight to be given their testimony. Stephens Truck Lines v. Millican, 58 Ark. App. 275, 950 S.W.2d 472 (1997). In order to prove a compensable injury a claimant must prove, among other things, a causal relationship between the injury and the employment. 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. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999). 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 existence and extent of the injury, and a preponderance of other nonmedical evidence establishes a causal relation to a work-related incident. Wal-Mart Stores, Inc. v. Van Wagner, supra; Wal-Mart Stores, Inc. v. Leach, 74 Ark. App. 231, 48 S.W.3d 540 (2001).

The court further recognizes that if the claimant's disability arises soon after the accident and is logically attributable to it, with nothing to suggest any other explanation for the employee's condition, it may say without hesitation that there is no substantial evidence to sustain the Commission's refusal to make an award. Clark v. Ottenheimer, 229 Ark. 383, 314 S.W.2d 497 (1958); Johnson v. Little Rock School District, Full Commission Opinion filed April 4, 2002 (E700511 & F011921).

Here, it is undisputed that Claimant reported to her supervisor on Friday evening March 7, 2003 that she fell in the restroom. There is no evidence that Claimant had any prior back injury and her co-workers have testified that they believed that she was in good health prior to the fall. The Majority's opinion also fails to account for the objective findings of acute injury on the MRI of Claimant's lumbar spine, which Dr. Lancaster similarly recognized in his March 18, 2003, notes. The MRI results state that Claimant had an HNP (herniated nucleus pulposis), which is commonly referred to as a herniated disc, at the L5-S1 level. A herniated disc is logically attributed to a fall.

Further, as in Clark, the record does not evidence any other credible explanation for Claimant's back injury. Even if the Commission considers the testimonies of Blevens and Reed, they do not show that Claimant further injured her back over the weekend but, instead, confirms that Claimant was injured on Friday, March 7th in Respondent's restroom. The Commission cannot speculate that just because Claimant may have cleaned a home over the weekend that she sustained another injury. There is no evidence in the record that Claimant injured or further injured her back over the weekend of March 8th and 9th. Instead, it is undisputed that Claimant informed her supervisor, coworkers, plant manager, and human resource personnel that she injured herself on Friday.

For these reasons, I find that Claimant's injuries are established by objective findings and causally connected to her March 7, 2003, fall. I, therefore, dissent from the Majority opinion.

SHELBY W. TURNER, Commissioner