

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F010842

FAYE ANDERSON,
EMPLOYEE

CLAIMANT

RAY WHITE LUMBER CO., INC.,
EMPLOYER

RESPONDENT

AMERICAN INTERSTATE INSURANCE CO.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED MAY 4, 2005

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

Claimant represented by the HONORABLE F. MATTISON THOMAS,
III, Attorney at Law, El Dorado, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The claimant appeals an administrative law judge's
opinion filed June 2, 2004. The administrative law judge
found that the claimant's hearing loss was not compensable.
The administrative law judge found that there were no
"objective findings to support a conclusion that the
claimant sustained an injury to her back" on August 28,
2000. After reviewing the entire record *de novo*, the Full

Commission affirms the opinion of the administrative law judge.

I. HISTORY

The parties stipulated that the employment relationship existed on August 28, 2000. Faye Anderson, age 75, testified:

Q. What happened? Did you get hit with something?

A. The lights just went out. That's all I know. They said I was dead when they carried me out of there.

The claimant was treated at Sparkman Clinic on August 28, 2000, where it was indicated, "Staff states that she was hit by board but the patient doesn't recall any of this. She recalls cutting through a conveyer and was knocked out, doesn't recall getting up, being driven over here. Remembers coming to in the hallway of the clinic." The objective examination indicated:

HEENT: The patient is normocephalic. There was a 8 x 4 contusion to the lateral surface of the right orbit. Extraocular movements intact....
SKIN: There was a contusion the size of a grapefruit over the right proximal femur, the patient ambulated without pain....There was a contusion the size of a grapefruit over the left hip, ROM WNL....

The following was assessed: "Mild Concussion," "Contusion - RT eye, Rt thigh, Lt hip," "Multiple abrasions, and ecchymosis," and "Trauma." Conservative treatment was planned.

A CT scan of the head was taken without contrast on August 29, 2000, with the following findings:

On the bone windows, no fracture is identified. There is fluid in the right maxillary sinus and also in the ethmoid sinuses. The sphenoid sinuses are clear. There is a small amount of air in the soft tissues adjacent to the posterior orbital wall on the right presumably associated with the trauma.

Intracranially, there are no extra-axial collections present and there is no subarachnoid or intracerebral hemorrhage. There is diminished attenuation in the periventricular white matter felt to be due to chronic ischemic changes. There is no midline shift present.

IMPRESSION:

1. Right maxillary and ethmoid sinusitis.
2. Small vessel ischemic changes in the periventricular white matter.
3. Evidence of trauma in the soft tissues adjacent to the right orbit.

Dorland's Illustrated Medical Dictionary, 28th Ed., defines "orbit" as "the bony cavity that contains the eyeball."

The record contains a Form AR-3, Physician's Report dated October 20, 2000. The Report indicated that the

claimant's hematoma had decreased, with minimal tenderness, and that there were no complaints of facial numbness. The claimant was released to return to work.

The parties stipulated that the respondents paid temporary total disability compensation and medical expenses until October 20, 2000.

There was no additional medical treatment of record until the claimant presented to Dr. R. Paul Tucker on January 10, 2003:

This 72 year old right handed white woman was injured in May of 2000 when she was working at the White Lumbar (sic) Company in Sparkman, Arkansas. She injured the right side of her face by a plane belt. She was apparently injured severely enough that they thought she was dead. She had been "strong as a horse" until then but she is getting worse.

Her hearing has been getting worse in the right ear. The right side of her face is numb. She has pain in the right side of her head and this now goes down into the neck on the right side....

Her right ear feels puffy but when she looks at it in the mirror, it is not puffy. She complains about the right lip seeming to swell up. She has numbness in her legs and loss of memory. All of these things seem to be related to the injury in the lumbar (sic) company. She loves to work and would like to go back to work....

She has confusion and problems with concentration and memory. She has had a personality change and is becoming depressed. She has blurred vision

in both eyes. The patient has no transient loss of vision. She has a complete absence of the sense of smell. This preceded her present injury....She has decreased hearing in both ears but mostly in the right ear....

IMPRESSION: Two elements of her history alert me to the question of an acoustic neuroma. She has the problem with numbness of the right side of the face and the hearing loss on the right side. It is possible she has something like an acoustic neuroma and that some of these other things have been added to this. Very importantly, she has the loss of the corneal reflex on the right side.

I would like to obtain an MRI of the brain with contrast with thin sections through the area of the auditory nerve to see if she has this important problem. It would not produce all the findings she has and some of them are very inconsistent. The loss of the corneal reflex is impressive. The headaches could also be related to an acoustic neuroma....

Dorland's defines "acoustic neuroma" as "a progressively enlarging, benign tumor, usually within the internal auditory canal arising from Schwann cells of the vestibular division of the eighth cranial nerve; the symptoms, which vary with the size and location of the tumor, may include hearing loss, headache, disturbances of balance and gait, facial numbness or pain, and tinnitus."

An MRI of the claimant's brain was taken on January 14, 2003, and Dr. Tucker gave the following impression:

Despite the patient's history of a right hearing loss and decreased corneal reflex with numbness of the right face, I note no evidence of an acoustic neuroma or other enhancing lesion or any other mass lesion. We have extensive white matter changes. One small lacunar infarction in the right parietal region just lateral to the lateral ventricle. I really failed to mention the sinuses here. We have evidence of maxillary sinusitis which is fairly extensive on both sides with involvement of the ethmoid sinuses as well. Sinusitis appears to be worse on the right side.

Despite his impression on January 14, 2003 that there was "no evidence of an acoustic neuroma or other enhancing lesion," Dr. Tucker noted on February 18, 2003:

An MRI of the brain with and without contrast demonstrated an acoustic neuroma. She had hearing loss, numbness of the right face and a decreased corneal reflex on the right side. She had fairly extensive maxillary sinusitis and perhaps we should approach this. She did not describe pain in that area and we need to explore this more carefully. She injured the right side of her face with a plane belt in the lumbar (sic) company in Sparkman, Arkansas. She thinks her hearing has decreased since that time....

I was thinking we had already done an MRI of the lumbar spine. She has trouble with walking....

The MRI of the brain seems to be the most important finding but we now probably need to do an MRI of the lumbar spine because of her complaints about back pain....

Dr. Tucker wrote to the claimant's attorney on March 18, 2003:

Mrs. Anderson is a 72 year old woman who had been injured in May of 2000 when she was working at the White Lumbar Company in Sparkman, Arkansas. The right side of her face was injured by a plane belt and she was injured severely enough that she says they thought she was dead.

With the injury, her hearing has become worse in the right ear. The right side of her face is numb. She has pain in the right side of her head down into her neck on the right side....She has numbness in her legs and loss of memory, all related to her injury....

On examination, this is a chronically ill appearing woman when I saw her initially in January of this year. I did not see any severe scarring of her face from her injury....The general physical examination was normal....

I could not identify a hearing loss without special equipment....

Because she had complex problems involving the right side, we obtained an MRI of the brain. This showed no evidence of an acoustic neuroma. She had a small lacunar infarction in the right parietal region, just lateral to the lateral ventricle. This lesion was about 3 to 4 millimeters. There were smaller bright spots which look like lacunar infarctions. It is possible these could have been related to her injury. She has maxillary sinusitis on both sides, and this is probably unrelated but it is difficult to be sure....

The patient has vast complaints and few objective physical findings. She has the small lacunar infarction in the right side of her brain, which is objective.

Based on her findings, I would say that her prognosis is fairly good in terms of the injury she suffered. If the lacunar infarction is

related to her injury, I do not think this would occur again without severe trauma. The injury would not predispose her to future injuries. Regarding future treatment, I would expect no surgery. She might need to continue to work with medications to try to get pain relief. The pain is an important problem and can sometimes occur in the absence of the usual kinds of objective findings such as reflex changes, atrophy, etc. In terms of whether or not her injuries are permanent in nature, this is difficult to say. The lacunar infarction will never disappear but I doubt this is causing her any difficulty at the present time. This type of small infarction is asymptomatic. If this caused anything, it might cause some left sided sensory changes.

In terms of permanent disability, I am using principally Table 18-4 on page 576 of the Guides to the Evaluation of Permanent Impairment, Fifth Edition, AMA Press. In terms of the self report, I have to estimate this since I did not have an opportunity to ask these questions when she was here and will have to base this on the information she gave me. Regarding pain, her self report of severity of pain is classed as an average of 6. In terms of Section II, activity limitation or interference is also a 6, on the average. In Section III of Table 18-4, the individual's report of effect of pain on mood, I would have to say she was a 10. She has a suicidal attempt at the time she was having all these problems. Evaluating Section 18-4, in terms of credibility, I would rate this as a minus 5, or $23 - 5$, giving her 18. In Table 18-5, where the findings were mixed or ambiguous, I would rate her as a zero and not alter the score. This pain related impairment from Table 18-7 would be a mild impairment and the overall permanent partial disability of the whole person is 17%.

In terms of the cost of future treatments, including any medications, this is just an

estimate....She may need to have an MRI of the lumbar spine, at the cost of \$1400.00....

A pre-hearing order was filed on March 26, 2004. The claimant contended that she "was working for the respondent on August 28, 2000 when several pieces of lumber were shot out of a high speed wood planer striking her in the head, face and back, and knocking her to the ground. She contends that the traumas caused by the lumber striking her have caused her to suffer permanent back problems as well as a permanent loss of hearing."

The respondents contended that "neither her back or her hearing loss is related to the August 28, 2000 injury. Respondents contend that the claimant did not complain about, nor seek treatment for her hearing loss or back until two years after the accident, and they contend that there are no objective findings of hearing loss or back problems."

The administrative law judge determined that the issues for litigation were limited to the following:

- (1) Whether the claimant sustained a compensable injury to her back on August 28, 2000;
- (2) Whether the claimant's hearing loss was related to her August 28, 2000 injury;
- (3) Whether the claimant was entitled to additional temporary total disability compensation;

- (4) Whether the claimant was entitled to compensation for a permanent physical impairment; and
- (5) Whether the claimant was entitled to additional medical treatment.

A hearing was held on May 4, 2004. The claimant testified, "I fall and my head hurts all the time." The claimant testified that her hearing was "not too good," and that her back "hurts all the time."

The administrative law judge found, in pertinent part:

- 3. The medical records that were submitted into the record do not contain any objective findings to support a conclusion that the claimant's hearing loss is compensable under the Arkansas Workers' Compensation Law.
- 4. Likewise, the medical records do not contain any objective findings to support a conclusion that the claimant sustained an injury to her back as a result of the August 28, 2000 incident.
- 5. I find that the claimant failed to establish by a preponderance of the evidence elements necessary to establish a compensable injury under the Arkansas Workers' Compensation Law.

The administrative law judge therefore denied and dismissed the claim. The claimant appeals to the Full Commission.

II. ADJUDICATION

A. Whether the claimant sustained a compensable injury to her back on August 28, 2000.

The claimant contended that she was working on August 28, 2000 "when several pieces of lumber were shot out of a

high speed wood planer striking her in the head, face and back, and knocking her to the ground.”

Ark. Code Ann. §11-9-102(4) (A) defines “compensable injury”:

(i) An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, 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[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4) (D). The claimant’s burden of proof shall be a preponderance of the evidence. Ark. Code Ann. §11-9-102(4) (E) (i).

In the present matter, the preponderance of evidence does not demonstrate that the claimant sustained a compensable injury to her back. The record shows that there was a specific incident identifiable by time and place of occurrence on August 28, 2000. The record does not show, however, that the claimant sustained an accidental injury causing physical harm to her back. The preponderance of evidence demonstrates that the claimant sustained injuries

to her right orbit, right proximal femur, and left hip. An examining physician characterized the claimant's accident as causing injuries to her right eye, right thigh, and right hip. There is simply no evidence before the Commission showing that the claimant sustained a compensable injury to her back on August 28, 2000. The Full Commission therefore affirms the administrative law judge's finding, "the claimant failed to establish by a preponderance of the evidence the elements necessary to establish a compensable injury under the Arkansas Workers' Compensation Law."

B. Whether the claimant's hearing loss was related to her August 28, 2000 injury.

If the claimant had sustained a compensable back injury, then the Commission would determine whether or not the claimant had proved she sustained hearing loss as a compensable consequence of the compensable back injury. See, Air Compressor Equip. v. Sword, 69 Ark. App. 162, 11 S.W.3d 1 (2000). The Full Commission has found, however that the claimant did not prove by a preponderance of the evidence that she sustained a compensable back injury. Nor does the evidence demonstrate that the claimant sustained an injury to one or both ears as a result of the August 28,

2000 specific incident. We again note from the record that the claimant sustained injuries to her right orbit, right proximal femur, and right hip. The Full Commission therefore affirms the administrative law judge's finding that the claimant did not prove her alleged hearing loss was compensable.

C. Whether the claimant was entitled to additional temporary total disability.

An injured employee is entitled to temporary total disability compensation during the time that she remains within her healing period and is totally incapacitated from earning wages. Ark. State Hwy. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981).

In the present matter, the evidence indicates that the August 28, 2000 specific incident caused injuries to the claimant's right orbit, right proximal femur, and left hip. The Commission notes that the claimant did not expressly contend that she sustained injuries to these anatomic areas. Nevertheless, the parties stipulated that the respondents paid temporary total disability compensation until October 20, 2000. There is no evidence before the Commission indicating that the claimant remained both within a healing

period or totally incapacitated to earn wages at any time after October 20, 2000.

D. Whether the claimant was entitled to compensation for a permanent impairment.

An injured worker must prove by a preponderance of the evidence that she is entitled to an award for a permanent physical impairment. Weber v. Best Western of Arkadelphia, Workers' Compensation Commission F100472 (Nov. 20, 2003). Pursuant to Ark. Code Ann. §11-9-522(g), the Commission was directed to adopt an impairment rating guide to be used in assessing anatomical impairment. The Commission therefore established Rule 34, which adopted the Guides to the Evaluation of Permanent Impairment (4th ed. 1993) published by the American Medical Association. Any determination of the existence or extent of physical impairment shall be supported by objective and measurable physical findings. Ark. Code Ann. §11-9-704(c).

The claimant in the present matter contended that she had sustained "permanent back problems as well as a permanent loss of hearing." The Full Commission has determined in this case that the claimant did not prove she sustained a compensable back injury or compensable hearing

loss. The claimant therefore cannot prove she is entitled to any permanent benefits for these non-compensable conditions. We recognize that Dr. Tucker assigned a permanent partial disability rating of 17%. Even if Dr. Tucker's rating was in reference to a compensable injury, which the Commission does not find, we note that Dr. Tucker's assessment was based on pain pursuant to the 5th Edition of the Guides. The Commission therefore cannot rely on the impairment rating assessed by Dr. Tucker. Nor is there any other evidence from which the Commission can assign the instant claimant a permanent impairment rating based on Arkansas law.

E. Whether the claimant proved she was entitled to additional medical treatment.

An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a). The claimant must prove by a preponderance of the evidence that she is entitled to additional medical treatment. Wal-Mart Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W.3d 153 (2003).

What constitutes reasonably necessary medical treatment is a

question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

The instant claimant appears to assert in her brief that she is entitled to additional medical treatment for "a brain injury in 2000." The respondents argue, correctly, that the claimant did not contend before the administrative law judge that she had sustained a brain injury as a result of the August 28, 2000 specific incident. Nor does the record otherwise indicate that the claimant sustained a brain injury. The Commission has stated at length that the claimant was assessed with contusions to her right eye, right thigh, and left hip. The claimant was also assessed with mild concussion, but a CT scan revealed "no subarachnoid or intracerebral damage." Although a physician's impression on August 29, 2000 included "evidence of trauma in the soft tissues adjacent to the right orbit," there was otherwise no indication that the claimant sustained a traumatic injury to her brain on August 28, 2000. Dr. Tucker began treating the claimant in 2003. Based on his examinations and diagnostic testing, Dr. Tucker was unable to conclude that the claimant had sustained an injury to her brain. In January 2003, Dr. Tucker expressly

noted "no evidence of an acoustic neuroma or other enhancing lesion or any other mass lesion." Dr. Tucker again stated in March 2003 that there was no evidence of an acoustic neuroma. We recognize that Dr. Tucker thought there was a lacunar infarction, but he stated, "I doubt this is causing her any difficulty at the present time." The Full Commission finds that the claimant did not prove she was entitled to additional medical treatment after October 20, 2000.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not sustain a compensable injury to her back on August 28, 2000, and that the claimant did not prove that her alleged hearing loss was related to the August 28, 2000 specific incident. The Full Commission therefore affirms the administrative law judge's findings that the claimant's hearing loss was not compensable and that the claimant did not sustain a compensable back injury. The Full Commission finds that the claimant did not prove she was entitled to additional temporary total disability compensation or additional medical treatment. We also find that the claimant did not

prove she was entitled to a permanent anatomical impairment rating. This claim is denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. McKINNEY, Commissioner

Commissioner Turner dissents.