

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F013783

DOROTHY J. BEARDEN, EMPLOYEE	CLAIMANT
SOUTHLAND RACING CORPORATION, EMPLOYER	RESPONDENT
GALLAGHER BASSETT INSURANCE, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JUNE 23, 2005

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

Claimant represented by the HONORABLE KRISTOFER E.
RICHARDSON, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE ERIC NEWKIRK,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed July 28, 2004. The administrative law judge
found that the claimant proved she sustained an injury to
her low back on November 18, 2000. After reviewing the
entire record *de novo*, the Full Commission reverses the
opinion of the administrative law judge. The Full
Commission finds that the claimant did not prove by a
preponderance of the evidence that she sustained a

compensable injury to her low back. We find that the claimant did not establish a compensable injury to her low back by medical evidence supported by objective findings.

I. HISTORY

The parties stipulated that the claimant sustained a compensable injury to her right little finger and left hip on November 18, 2000. The claimant testified, "I stumbled over the boxes and fell, and my left finger hit one of the machines that was sitting there by where I fell. My hip hit the concrete floor and I couldn't move, and the paramedics came and took me to the hospital." A history and physical on November 19, 2000 indicated that the claimant had fallen, and that the claimant complained of left hip pain and right fifth-digit pain, "No other inj." Diagnostic imaging on November 19, 2000 showed two views of the claimant's lumbar spine: "The lumbar lordotic curvature is maintained. There is a Grade I retrolisthesis of L5 with respect to L4. There is minimal degenerative disc disease at L4-5 and possibly at L5-S1. No other vertebral body abnormalities are noted."

Dr. Mark S. Harriman examined the claimant on November 30, 2000:

Ms. Bearden is a 64 year old teller at Southland Greyhound Park who fell 18 November. She says that she landed on her right knee and then had the left knee kind of come up behind her and also injured her right small finger. The only things that still bother her are the right small finger and some pain on the outside of the left hip. She has never hurt these areas before and she is in good health other than obesity. She does have some diabetes....

X-RAYS of the hip look good to me.

Dr. Harriman's impression was, "The patient has a fractured finger and some hip bursitis." Dr. Harriman stated that the claimant could return to sedentary work if available. Dr. Harriman returned the claimant to full work duty in January 2001.

An MR of the claimant's lumbar spine was taken on April 28, 2002, with the resulting opinion:

1. Moderate degenerative disc disease L4-5 with slight retrolisthesis of the L5 vertebral body. There is a minimal diffuse bulge at this level. There is advanced degenerative facet arthropathy.
2. Diffuse of +2 to +3 of the L3-4 disc. There is minimal right side degenerative facet arthropathy.
3. Minimal diffuse bulge of the degenerative L5-S1 disc.

(Disc bulging, protrusions and bars are graded 0 to 4 with 0 being normal, +1 being minimal, +2 being mild, +3 being moderate and +4 being severe.)

Dr. K. Blake Ragsdale reported on October 15, 2002:

Ms. Bearden presents today with a new complaint. This is a 64 year old, African-American female who fell in November 2000, and has been complaining of chronic low back pain and right buttock pain, posterolateral thigh pain, occasional medial thigh pain as well. Then she has distal pain radiating from the knee distally to the foot on the dorsum of the foot with burning and tingling. She has had a study recently of MRI in April of this year, showing some degenerative changes at L4-5 and L5-S1, also, L3-4 with degenerative facet arthropathy. No significant canal or lateral recess stenosis was noted. She does have a degenerative listhesis of L4 on L5 by MRI. She also had an EMG/Nerve Conduction Velocity recently of the right lower extremity which was normal....

AP of the pelvis and Lateral of the lumbosacral spine shows L4 on 5 spondylolisthesis. Degenerative changes of the L4-5 disc space and facets and L5-S1 interspace and facets. No significant evidence of foraminal stenosis is noted. AP of the pelvis shows very minimal degenerative changes in both of the SI joints. No significant acute pathology is noted and no significant hip pathology is noted on xray.

Dr. Ragsdale's impression was "1) Chronic sacroilitis right hemipelvis. 2) Degenerative lumbar disc disease. 3) Degenerative lumbar facet disease. 4) Degenerative L4-L5 spondylolisthesis. 5) Sciatic neuritis right lower extremity." Dr. Ragsdale noted on October 21, 2002, "The bone scan was normal. She is still complaining of a severe amount of low back pain and bilateral radicular symptoms of the lower extremities, particularly the right side....I recommend a lumbar epidural block with MAG followed by

evaluation and functional capacities evaluation and physical therapy." The claimant continued to occasionally follow up with Dr. Ragsdale.

The claimant began treating with Dr. Kevin T. Foley in February 2003. Dr. Foley wrote to Dr. Hugh Holt on February 13, 2003:

As you know this nice lady complains primarily of right buttock and leg pain. The pain seems to radiate into the lateral aspect of her anatomic leg on this side and would be most consistent with an L5 radiculopathy. She is neurologically intact except for diminished ankle jerks bilaterally which is probably secondary to her underlying diabetes. Her pain is quite mechanical. She also has a component of mechanical back pain in association with the leg pain. She notes that the pain comes on when she stands up only for about three or four minutes and that it quickly abates if she sits. I am suspicious that she is symptomatic from the spondylolisthesis that we see on her lumbar MRI. She does have degenerative changes in her lumbar spine at other levels but the spondylolisthesis at L4-5 would be a likely culprit because of her mechanical symptomatology. I would like to obtain some new images, as the MRI is almost a year old....

The parties stipulated that the respondents paid "medical and indemnity benefits" through on or about February 17, 2003.

An MR of the claimant's lumbar spine was taken on February 18, 2003:

Advanced degenerative facet changes are present bilaterally at the L4-5 and there is an associated Grade I anterior subluxation of L4 on 5. There is associated posterior bulge of disc material diffusely at this level. Degenerative facet changes are present bilaterally at the L3-4 level and a mild diffuse disc bulge is present at this level and there is slight anterior subluxation of L3 on 4. No additional lesions are identified.

IMPRESSION: Spondylolisthesis L4-5 and L3-4 secondary to degenerative facet disease as described.

The claimant returned to Dr. Foley's clinic on February 20, 2003:

We reviewed her MRI as well as her flexion/extension views. She does have a fairly significant spondylolisthesis at L4-5 that is nearly a Grade II slip in flexion (she slips approximately 10 to 11 mm). It reduces somewhat in extension (to approximately 7 mm). Her MRI shows multi level degenerative disc disease but the only neural compression I see is at the L4-5 level where she has stenosis and a significant component of lateral recess stenosis. This correlates with her symptomatology which is largely related to her left L5 nerve root....She does have diabetes and this can cause neuropathic pain but I believe her radiculopathy is more compressive in nature especially given its positional characteristics. Thus I think she is a good candidate for decompression and fusion at the L4-5 segment. We would plan to do a posterior lumbar interbody fusion at this level in association with a decompression and pedicle screw fixation....

The claimant's "admission diagnosis" on February 28, 2003 was "Spondylolisthesis." Dr. Mark D. Smith performed a "Posterior lumbar interbody fusion L4-L5 on 02/28/2003."

It was noted in March 2003 that the claimant reported good results from surgery. Dr. Foley noted in April 2003, "Her spondylolisthesis has been nicely reduced. Her instrumentation is intact and her fusion is in an early state of healing. Of concern to me is the fact that she got fired by her job for not being able to stand up. Of course the reason for this was that she had the horrible spinal stenosis and spondylolisthesis. She did have a nerve block pre-operatively but this really wasn't enough to fix her problem. On the other hand the surgery has corrected the abnormality."

The claimant returned to Dr. Foley in July 2003:

She is status post an L4-5 decompression and minimally invasive fusion done for spinal stenosis and a Grade II L4-5 spondylolisthesis on February 28, 2003. It is notable that her symptoms began with a fall at work almost two years ago. In any event she has done well with her back surgery. Her back pain is significantly improved.

A pre-hearing order was filed on January 22, 2004. The claimant contended that she was entitled to additional medical treatment. The claimant contended that she injured her low back on November 18, 2000, or that her back injury was "a compensable consequence" of the claimant's November 18, 2000 compensable injuries. The claimant contended that

she was entitled to additional temporary total disability compensation from October 4, 2002 through October 26, 2002, and from February 28, 2003 through August 26, 2003. The respondents contended that they had paid all appropriate benefits for which the claimant was entitled, and that further medical treatment was not reasonably necessary in connection with the claimant's compensable injuries. The respondents alternatively contended, pursuant to Ark. Code Ann. §11-9-411, that they were entitled to an offset for all group health benefits which may have been paid.

The parties agreed to litigate the following issues: "(1) Whether in addition to the admitted injuries, claimant sustained a back injury as the result of the incident on November 18, 2000; and (2) the claimant's entitlement to additional benefits."

After a hearing before the Commission, the administrative law judge found, "The claimant has proven, by a preponderance of the credible evidence, that, in addition to her admitted injuries, she also sustained an injury to her low back on November 18, 2000." The administrative law judge awarded medical treatment and temporary total

disability compensation. The respondents appeal to the Full Commission.

II. ADJUDICATION

The claimant contends that she sustained a compensable injury to her low back on November 18, 2000, that is governed by the Arkansas Workers' Compensation Act, Ark. Code Ann. §11-9-101 et seq. The claimant's alleged injury is, indeed, an injury that is covered by the Act; however, the claimant has failed to establish the elements necessary to prove a compensable injury by a preponderance of the evidence. 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). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16). The burden of proof

shall be a preponderance of the evidence. Ark. Code Ann. §11-9-102(4)(E)(i).

In the present matter, the Full Commission finds that the claimant did not prove she sustained a compensable injury to her low back on November 18, 2000. The parties stipulated that the claimant sustained a compensable injury to her right little finger and left hip on November 18, 2000. The record does not show that the claimant injured her low back or lumbar spine on that date. The initial medical report, dated November 19, 2000, indicated that the claimant complained of left hip pain and right fifth-digit pain after her fall, "No other inj." We recognize that diagnostic imaging of the claimant's lumbar spine on November 19, 2000 showed "Grade I retrolisthesis of L5 with respect to L4," along with "minimal degenerative disc disease at L4-5 and possibly at L5-S1." The Full Commission finds that these degenerative conditions do not demonstrate that the claimant sustained an injury causing physical harm to her low back or lumbar spine. Nor do we find that the November 19, 2000 diagnostic imaging constitutes objective findings establishing a compensable injury, pursuant to Ark. Code Ann. §11-9-102(4)(D).

Approximately 17 months after the November 2000 compensable injury to the claimant's right little finger and left hip, an MR of the lumbar spine in April 2002 showed "degenerative disc disease L4-5 with slight retrolisthesis of the L5 vertebral body. There is minimal diffuse bulge at this level." The April 2002 MR also showed degeneration and bulging at L3-4 and L5-S1. The Full Commission finds that the degenerative conditions shown in the April 2002 diagnostic testing do not constitute medical evidence supported by objective findings establishing a compensable injury to the claimant's low back or lumbar spine on November 18, 2000. In October 2002, Dr. Ragsdale recognized "a degenerative listhesis of L4 on L5 by MRI." Dr. Ragsdale also stated, "No significant acute pathology is noted and no significant hip pathology is noted on xray." The Full Commission finds that the "degenerative listhesis" described by Dr. Ragsdale does not constitute an objective finding establishing a compensable injury to the claimant's back on November 18, 2000.

The claimant began treating with Dr. Foley in February 2003. Dr. Foley was "suspicious that she is symptomatic from the spondylolisthesis that we see on her lumbar MRI.

She does have degenerative changes in her lumbar spine at other levels but the spondylolisthesis at L4-5 would be a likely culprit because of her symptomatology." An MR of the lumbar spine in February 2003 showed "Degenerative facet changes are present bilaterally at the L4-5 and there is an associated Grade I anterior subluxation of L4 on 5." These degenerative conditions described by Dr. Foley and confirmed in the February 2003 diagnostic testing do not constitute objective findings establishing a compensable injury to the claimant's low back or lumbar spine on November 18, 2000. The Full Commission notes the pre-operative diagnosis in February 2003 of "Spondylolisthesis," a degenerative condition not establishing a compensable injury to the claimant's low back on November 18, 2000. We recognize Dr. Foley's opinion in July 2003 that the claimant's symptoms "began with a fall at work almost two years ago." Nevertheless, the Full Commission does not find in Dr. Foley's reports or elsewhere in the record that the claimant sustained an accidental injury causing physical harm to her low back or lumbar spine on November 18, 2000. Nor do we find that the claimant established such an injury by medical evidence supported by objective findings. In addition, the

record does not demonstrate that the degenerative "abnormality" corrected at surgery was the result of the claimant's November 18, 2000 injury to her right little finger and left hip.

The claimant argues on appeal that the existence of her back problems "is fully supported by diagnostic findings of multiple disc bulging." The Full Commission has discussed at length the fact that the claimant's degenerative condition in her lumbar spine, including her degenerative multi-level bulging in her lumbar spine, was not the result of the compensable injury to the claimant's right little finger and left hip on November 18, 2000. The claimant also argues that her pre-existing degeneration was "aggravated" by the fall on November 18, 2000. An aggravation, being a new injury with an independent cause, must meet the requirements for a compensable injury. Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000). Therefore, in addition to proving that she sustained an accidental injury causing physical harm to her low back on November 18, 2000, the claimant must also establish a compensable injury to her back by medical evidence supported by objective findings. See, Ark. Code Ann. §11-9-102(4) (A) (i); Ark. Code

Ann. §11-9-102(4)(D). The claimant has not proved that she sustained an accidental injury causing physical harm to her lower back on November 18, 2000, and she has not established such an injury by medical evidence supported by objective findings.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove she sustained an accidental injury causing physical harm to her low back or lumbar spine on November 18, 2000. The claimant did not establish a compensable injury to her low back or lumbar spine by medical evidence supported by objective findings. The Full Commission therefore reverses the opinion of the administrative law judge, and this claim is denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.