NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F312431

EVERETTE CALDWELL,
EMPLOYEE CLAIMANT

SUPERIOR INDUSTRIES,
EMPLOYER RESPONDENT

CROCKETT ADJUSTMENT,
INSURANCE CARRIER RESPONDENT

OPINION FILED MAY 20, 2005

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

Claimant represented by HONORABLE JASON HATFIELD, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by HONORABLE CURTIS NEBBEN, Attorney at Law, Fayetteville, Arkansas.

Decision of the Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

This case comes on for review by the Full Commission on appeal by respondents from an opinion filed herein by an Administrative Law Judge on June 25, 2004.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On August 25, 2003, the relationship of employee-employer-carrier existed between the parties.

3. The parties have stipulated that the claimant is entitled to a compensation rate of $305.00 for temporary total disability and $229.00 for permanent partial disability.

4. The claimant has proven by a preponderance of the evidence that he sustained a sudden onset injury on August 25, 2003, while working for the respondent. The claimant has testified to a specific incident which was immediately reported, verified by objective medical findings necessitating medical treatment.

5. The respondents should pay to this claimant all reasonable and necessary medical treatment for his compensable injury.

6. The claimant is entitled to temporary total disability from November 4, 2003 to a date to be determined.

7. The respondents have controverted this claim in its entirety.

8. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits herein awarded.

We have carefully conducted a de novo review of the entire record herein, and it is our opinion that the decision of the Administrative Law Judge is correct 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.

We therefore affirm the June 25, 2004 opinion of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission. 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.

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OLAN W. REEVES, Chairman

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SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I respectfully dissent from the majority opinion finding that the claimant proved by a preponderance of the evidence that he sustained a compensable injury on August 25, 2003. Based upon my de novo review of the record, I find that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury on August 25, 2003. Accordingly, I would reverse the decision of the Administrative Law Judge.

The claimant began his employment with the respondent employer in May of 2002. His primary job duties included lifting wheels out of a bin that ranged in weight from 35 to 120 pounds. The claimant was then required to sort these wheels and throw them onto a conveyor belt. The claimant contends that on August 25, 2003, while bending over to pick up a wheel he felt a "pop" in his wrist and lost the grip of a wheel. The claimant reported the incident to the Safety office of the respondent employer where ice was put on his wrist and then he was sent to see Dr. Garland Thorne, the company physician. The claimant testified that his arm was swollen and a little red. Dr. Thorne noted that the claimant had pain in his right wrist while lifting and restricted the claimant from lifting anything over 10 pounds. The claimant was also provided a splint to wear on his wrist. The claimant was restricted to light duty work

for two weeks and was scheduled for a return appointment for two weeks later. The claimant continued to perform his work tasks and turned in similar notes for light duty on September 8th and September 17th, 2003. On September 8th, 2003, the claimant complained to Dr. Thorne that he had right wrist pain. Dr. Thorne thought that the claimant had sustained a torn ligament and referred him to Dr. Brian Benafield.

The claimant first sought treatment from Dr. Benafield on September 17, 2003. Dr. Benafield noted that the claimant had felt a "pop" on the ulnar side of his wrist on August 25, 2003. Dr. Benafield initially thought that the pop in the claimant's wrist was a torn cartiledge and sent the claimant for an MRI. The MRI was performed on September 22, 2003, and the claimant was ultimately diagnosed with Kienbock's disease. Dr. Benafield determined that the claimant had a relatively low grade Kienbock's because the claimant's plain films did not exhibit any x-ray changes. It was not until the MRI where the Kienbock's was diagnosed. Dr. Benafield testified in his deposition that he had no idea what the significance was of the "pop" that the claimant experienced on August 25, 2003. Kienbock's disease is avascular necrosis of the lunate. The lunate is one of the small groups of bones in the wrist joint itself. Avascular necrosis is where the blood supply is decreased to

the bone and series of degenerative changes occur within it. Dr. Benafield stated that Kienbock's can cause pain to develop in the wrist. He stated that the treatment for the condition depends on the individuals condition. Ultimately, Dr. Benafield performed a capitate shortening and a capitate-hamate fusion on the claimant's wrist.

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," so the employee was required to show that a causal connection existed between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). An injury occurs "'in the course of employment' when it occurs within the time and space boundaries of the employment, while the employee is carrying out the employer's purpose, or advancing the employer's interest directly or indirectly." City of El Dorado v. Sartor, 21 Ark. App. 143, 729 S.W.2d 430 (1987). Under the

statute, for an accidental injury to be compensable, the claimant must show that he/she sustained an accidental injury; that it caused internal or external physical injury to the body; that the injury arose out of and in the course of employment; and that the injury required medical services or resulted in disability or death. *Id*. Additionally, 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). The injured party bears the burden of proof in establishing entitlement to benefits under the Workers' Compensation Act and must sustain that burden by a preponderance of the evidence. *See* Ark. Code Ann. § 11-9-102(4)(E)(i)(Repl. 2002); Clardy v. Medi-Homes LTC Servs., 75 Ark. App. 156, 55 S.W.3d 791 (2001).

After reviewing the medical records, it is my opinion that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury on August 25, 2003. Dr. Benafield's deposition indicated that the claimant's incident on August 25, 2003, caused the claimant to have pain in his wrist. Dr. Benafield stated that the claimant's only symptom was pain in his wrist but the incident on August 25, 2003,

did not cause the claimant's avascular necrosis. Dr. Benafield explained that it was not necessary for the claimant to experience some type of strain or trauma in order to experience pain in the hand or wrist due to the Kienbock's disease. It was Dr. Benafield's opinion that the claimant "absolutely" had Kienbock's disease before the August 25, 2003, incident. He also testified that it was more than likely that even if the claimant had never experienced trauma to the wrist he would eventually require corrective surgery for the Kienbock's. Further, he opined that the incident did not aggravate or speed up the claimant's necrosis. He merely stated that the claimant's injury only caused the necrosis to become more symptomatic.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a)(Repl. 2002). However, injured employees have the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary for the treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission Opinion filed February 17, 1989 (Claim No. D612291). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. Deborah

Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D512553). Also, the respondent is only responsible for medical services which are causally related to the compensable injury. In my opinion a review of the evidence demonstrates that the treatment provided to the claimant by Dr. Benafield is not causally related to a work related incident on August 25, 2003. A review of the evidence also demonstrates that the claimant does not have a compensable injury that is supported by objective findings as required by the statute.

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. 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. 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). 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). 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).

The claimant has offered medical evidence supported by objective findings that he has Kienbock's disease. However, Dr. Benafield's testimony is strong evidence that the claimant's August 25, 2003, work incident did not cause the Kienbock's disease. The Kienbock's disease pre-existed the claimant's incident. Although the claimant testified that he experienced swelling of the right wrist following this incident, there are no medical reports in the record containing any mention of swelling.

The claimant also contends that he provided medical evidence supported by objective findings that he

sustained an aggravation of a pre-existing condition. However, Dr. Benafield's testimony stated that the incident on August 25, 2003, did not speed up the claimant's necrosis. Dr. Benafield stated that the claimant's incident at work only caused the Kienbock's to become more symptomatic and the only symptom was pain. The Commission has held that complaints of pain while at work are not sufficient to prove by a preponderance of the evidence that the pain is work-related. Jerry Caves v. Riverside Furniture Corp., Full Commission Opinion filed August 12, 1999 (Claim No. E714394). In Hapney v. Rheem Manufacturing Co., 342 Ark. 11, 26 S.W.3d 777 (2000), the Arkansas Supreme Court affirmed the Full Commission's finding that when a claimant cannot recall anything specific happening, did not know how she was injured, did not associate her pain with any particular, specific incident, then a specific incident injury claim is meritless.

The Full Commission likewise found in Ruth Howard v. Wal-Mart, Full Commission opinion filed November 3, 1999 (Claim No. E814194) that the claimant had failed to satisfy the specific incident element of compensability when she was "unable to identify any particular activity which caused her symptoms, and testified that she was merely hurting at the end of a long work day, and that there was no specific work-related incident." Therefore, I cannot find that the

claimant sustained a compensable injury supported by objective findings on August 25, 2003.

Doctor Benafield clearly stated in his deposition that the claimant's Kienbock's disease pre-existed the "pop" that the claimant experienced on August 25, 2003. Further, Dr. Benafield remarked that he had no idea how the pop was significant. There is no evidence that the claimant's work incident necessitated the surgery that Dr. Benafield performed on November 11, 2003. Doctor Benafield stated that a person who did not suffer from Kienbock's disease would not have been in pain due to the August 25th incident, but for the fact that the claimant had Kienbock's disease which came to the forefront which started causing him pain. The claimant's pre-existing Kienbock's disease is what required the medical treatment. Doctor Benafield stated in his deposition that the claimant's work related event on August 25, 2003, played absolutely no part in the causation of the claimant's developing Kienbock's disease.

Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority opinion.

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KAREN H. McKINNEY, Commissioner