

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F200450

CAROLYN EDGIN,
EMPLOYEE

CLAIMANT

EXPRESS PERSONNEL SERVICES,
EMPLOYER

RESPONDENT

AMERICAN HOME ASSURANCE CO./
GALLAGHER BASSETT SERVICES (TPA),
INSURANCE CARRIER

RESPONDENT

OPINION FILED NOVEMBER 2, 2005

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

Claimant represented by the HONORABLE BEN RICE, Attorney at
Law, Jacksonville, Arkansas.

Respondents represented by the HONORABLE CAROL LOCKARD
WORLEY, 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 on January 4, 2005. The administrative law
judge found, "Claimant has failed to prove by a
preponderance of the credible evidence that she sustained a
compensable low back injury arising out of and during the
course and scope of her employment on July 16, 2001, or that
any work-related injury she may have sustained was the major

cause of her condition." After reviewing the entire record *de novo*, the Full Commission affirms the opinion of the administrative law judge.

I. History

The claimant worked for the respondent/Express Personnel as a temporary employee at Leisure Arts. On July 16, 2001, while working as a temporary employee for the respondent, the claimant tripped and stumbled on a mat while carrying an armload of books. According to the claimant, she promptly reported the incident to her supervisor, Sheila Harris, and next she reported it to Ms. Harris's supervisor, Lionel. After this, the claimant maintains that she told Brandy (who is the Express Personnel representative there at the plant) about the incident. However, the claimant does not make a written report of the incident until October 17, 2001, but the respondent accepted the claim as compensable pertaining to the injuries sustained to the claimant's right knee and ankle, but it has controverted liability for any injuries relating to her lower back.

Specifically, the medical records show that the claimant first sought treatment for her compensable right ankle and knee injury from Dr. Robert Rook on July 20, 2001. At that time, Dr. Rook reported, "tripped over some mats

yesterday-right knee hurts down back of right calf into Achilles," for which he prescribed pain medication.

The claimant continued under treatment with Dr. Rook for follow-up care primarily due to right ankle and knee pain during the months of August, September and October of 2001, but there is no documented report of a compensable back injury. On November 27, 2001, Dr. Rook reported that the claimant has a past medical history significant for bulging disk in her back. Dr. Rook assessed the claimant with lumbar strain, for which he prescribed medications.

The claimant underwent initial evaluation with Dr. Kenneth Rosenzweig at the request of the respondent on October 22, 2001. According to these progress notes, the claimant was seen for evaluation due to right ankle and knee pain after a twisting injury when she tripped over a mat at work on July 19, 2001. The claimant was next seen by Dr. Rosenzweig on November 12, 2001 for follow-up care due to her injury. His impression was "chronic discomfort in posterior lateral ankle and calf pain in addition to knee pain after a twisting falling injury from July 19, 2001." Therefore, Dr. Rosenzweig referred the claimant for further evaluation with an MRI of the ankle and knee to rule out

lateral meniscal tear and rule out peroneal tendon interstitial tearing.

An MRI scan of the right ankle was performed on November 16, 2001, which was normal. Also on this date, an MRI of the right knee was performed which revealed "mild prepatellar edema, but the study was otherwise unremarkable." Therefore, on the claimant's next follow-up visit (November 19, 2001) with Dr. Rosenzweig, he released her to return to regular duty work without restriction.

The claimant was seen by Dr. Rosenzweig for a final follow-up visit on February 11, 2002. At that time, he declared the claimant was at maximum medical improvement for her compensable right knee and ankle injury, and assessed her with a zero percent impairment rating as a result of these injuries pursuant to the Guides to the Evaluation of Permanent Impairment (4th ed. 1993).

On April 30, 2002, the claimant underwent initial evaluation with Dr. Scott Bowen after obtaining a one-time change of physician by the Commission. At that time, Dr. Bowen reported in pertinent part:

History of Present Illness: Ms. Edgin [the claimant] is a 38 year old lady who was working at Leisure Arts when she tripped and twisted her knee and ankle with an inversion type injury to her ankle on 7/16/01. Subsequent to this, she was treated with a walking boot

for a period of two to three weeks without much help. She was then evaluated by Dr. Ken Rosenzweig who diagnosed a patellofemoral syndrome and ankle sprain and treated her with therapy, bracing. Eventually, due to some burning dysesthesias in the foot and leg, she was seen by Dr. Reggie Rutherford who did an EMG and nerve conduction studies that were normal. She had an MRI scan of her lumbar spine, right knee and right ankle that were all normal. She apparently has not been able to return her regular job with that agency and is working on a lighter job now.

Dr. Bowen's impression was "sequellae of ankle sprain and mild right patellofemoral syndrome," and he concurred with Dr. Rosenzweig's assessment of a zero percent impairment rating for this injury. As such, Dr. Bowen recommended that the claimant perform some home exercises and attempt weight reduction, but he had no further recommendations and concurred with Dr. Rosenzweig's plan for her, which entailed no additional treatment.

The claimant underwent initial evaluation with Dr. David Oberlander on June 5, 2002. At that time, the claimant's chief complaint was pain in the right leg, for which he ordered an MRI of the lumbar spine, which revealed the following:

IMPRESSION:

1. Mild disc degeneration at the L4-5 level. There was evidence of a right posterolateral annular tear with no herniated disc seen.
2. Mild disc desiccation at the L2-3 level.

3. The rest of the MRI was unremarkable with no discrete HNP, canal stenosis, or foraminal narrowing.

Dr. Oberlander next saw the claimant for follow-up care on September 3, 2002. At that time, Dr. Oberlander reported that an MRI had revealed that the claimant had a right posterolateral annular tear at L4-5 which would account for her pain, and on exam, he found her to have spasm. Dr. Oberlander also reported that this was most likely secondary to an accident back in July of 2001.

Dr. Oberlander referred the claimant to Dr. Anthony Russell for evaluation of continued pain and radiculopathy. On March 13, 2003, Dr. Russell reported, "As you recall, this 38-year old who works at Walmart [sic] give [sic] an approximately three year history of pain in her low back with radiation into the lower extremity." After reviewing an MRI scan of the claimant's lumbar spine, Dr. Russell determined that the findings on the scan were not sufficient to warrant neurosurgical intervention at that time other than to make plans for further workup. As a result, Dr. Russell referred the claimant to Dr. Hart so that he could perform a diagnostic provocative discogram in an attempt to determine an etiology of her ongoing pain. However, Dr. Russell notes that the claimant described a stumbling

incident that had occurred on July 16, 2001, which triggered the onset of pain.

According to clinical notes from Dr. Russell dated June 30, 2003, the claimant had been seen by Dr. Hart, who had performed the diagnostic diskogram. However, Dr. Russell reported that "the L4/5 disk reproduced her pain in it's [sic] entirety and the disk appeared to be circumferentially disrupted on the study," for which he recommended lumbar decompression and fusion at L4/5.

Subsequently on August 26, 2003, Dr. Russell performed "L4-5 decompressive laminectomy and posterior lumbar interbody fusion using the Ray cage system." The claimant tolerated the procedure well, and was discharged home two days later.

On November 10, 2003, Dr. Russell assessed the claimant with a 15% partial impairment rating to the whole person pursuant to AMA guidelines for impairment ratings due to her back condition. In addition to this, Dr. Russell reported "That the claimant's overall date for maximum medical improvement would be at minimum 6 [sic] months from the date of the operative procedure itself."

In a letter dated April 20, 2004, Dr. Oberlander wrote, in pertinent part, the following:

To Whom It May Concern:

Carolyn Edgin [the claimant] is a patient of mine with significant low back pain caused by a posterolateral right annular tear localized at L4-5. This lesion accounts for her pain and discomfort and was demonstrated on prior MRI imaging of the Low Back [sic]. It also produces radiating pain into the right leg and knee region. She began to suffer these symptoms after a work related injury which occurred back on 7-16-01. In my opinion, her pain and MRI findings are a direct result of this injury.

A hearing was held in this matter on October 6, 2004. At the hearing, the claimant gave testimony. The claimant admitted to being aware of the process for filing a workers' compensation claim, as she had previously filed a claim against American Cabinets in 1987, and gotten weekly benefits and been paid an impairment rating of 15%.

As to her alleged back injury, the claimant testified that she could not recall exactly when she began having back pain. In addition to this, the claimant admitted that for the first several months of her treatment, she did complain of back problems. Specifically, the claimant admitted to not reporting an alleged work-related back injury to any of her treating physicians for at least 14 months after her initial injury of July 16, 2001. However, the claimant denied telling Dr. Rosenzweig that she suffered from chronic back pain, but admitted to not giving a history of any work-

related fall. Although the claimant admitted to not filling out paperwork (the Arkansas Workers' Compensation Commission Form N) for her work related-injury until October 17, 2001, she maintains that she told Shelia, Lionel and Bradley about the incident on the date that she injured herself. The claimant admitted that **when she completed the Arkansas Workers' Compensation Commission Form N**, she reported on this document that **she had injured only her right knee and right ankle.**

In addition to her admittedly compensable knee and ankle injury, for which appropriate benefits have been paid, the claimant essentially testified that she was asking the respondent to pay her medical bills, loss of wages, the disability rating of 15% which was assessed by Dr. Russell for her back, and attorney's fees. However, the claimant did admit to working for Wal-Mart for awhile. According to the claimant, she has not returned to work since having worked for Wal-Mart, and has applied for Social Security Disability benefits.

Melissa Ann Saven, the branch manager for Express Personnel also gave testimony during the hearing. Ms. Saven explained the process for reporting an injury, but admitted to not becoming employed by Express Personnel until January

of 2002, which was several months subsequent to the claimant's injury.

Prior to the hearing, a Prehearing Conference was held in this case, on August 30, 2004, and as a result, a Prehearing Order was entered in this matter. The following stipulations were offered and accepted:

1. Date of injury: Respondent accepts a compensable injury on July 16, 2001, to the claimant's right ankle and knee.
2. Compensation rate: \$139.00.
3. Respondent asserts that they have paid temporary total disability benefits and medical benefits relative to the claimant's injury to her right lower extremity. The periods and amounts paid will be specifically stated or stipulated at the hearing.

At the hearing, the parties agreed to litigate the following issues:

- 1). The compensability of the claimant's low lower back injury.
- 2). Medicals.
- 3). Temporary total disability benefits.
- 4). Permanent partial impairment rating of 15%.

The claimant contended that she sustained injuries to her low back, as well as her right lower extremity on July 16, 2001. The claimant contended she is entitled to a 15%

whole body physical impairment rating, as well as attendant medical benefits and attorney's fees.

In contrast, the respondent has controverted any benefits claimed as a result of a low back injury. The respondent contended the claimant did not sustain injuries to her low back arising out of and during the course and scope of her employment on July 16, 2001, and has controverted the claimant in its entirety.

After a hearing before the Commission, the administrative law judge found, "Claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable low back injury arising out of and during the course and scope of her employment on July 16, 2001, or that any work-related injury she may had sustained was the major cause of her condition." The claimant appeals to the Full Commission.

II. Adjudication

In the present matter, the respondent has accepted and paid appropriate benefits for injuries that the claimant sustained to her right knee and right ankle, during the course and scope of her employment on or about July 16, 2001, which resulted when she tripped and stumbled as she carried an armload of books. Since this time, the claimant

has alleged that she also sustained a compensable injury to her lower back as a result of this incident; an injury which was caused by a specific incident and is identifiable by time and place of occurrence. After a hearing before the Commission, the administrative law judge found, "Claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable low back injury arising out of and during the course and scope of her employment on July 16, 2001, or that any work-related injury she may had sustained was the major cause of her condition."

The Full Commission implicitly affirms the administrative law judge's finding that "Claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable low back injury arising out of and during the course and scope of her employment on July 16, 2001." However, we note that to establish compensability of a low back injury under the "specific incident requirement," the claimant is not required to establish that her injury is the major cause of her disability or need for treatment.

Specifically, in order for the instant claimant to prove a compensable low back injury as a result of a specific incident which is identifiable by time and place of

occurrence, the following requirements of Arkansas Code Ann. § 11-9-102(4) (A) (i) (Repl. 2002), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann § 11-9-102(4) (D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. Mikel v. Engineered Speciality Plastics, 56 Ark. App. 126, 938 S.W. 2d 876 (1997).

The determination of the credibility of the witnesses and the weight to be given their testimony are matters exclusively within the province of the Commission. Copper v. Hiland Dairy, 69 Ark. App. 200, 11 S.W.3d 5 (2000).

In comparing the claimant's testimony to the preponderance of the evidence, we find that the claimant was not a credible witness. Specifically, although immediately

after the incident of July 16, 2001, the claimant received continuous care and treatment from several doctors for injuries to her right knee and right ankle, she did not allege a work-related back injury until some 14 months after this incident. In addition to this, when the claimant completed the first written report of her injury on the Form N, she makes absolutely no mention whatsoever of a back injury. It is also noted that on November 27, 2001, Dr. Rook reported that the claimant has a past medical history significant for bulging disk in her back; and on March 19, 2003, Dr. Russell reported that the claimant gave an approximate three-year history of back pain. Although the claimant denies a history of any prior problems with her back, these two reports strongly suggest that the claimant suffered preexisting back problems prior to the incident of July 16, 2001, as the claimant has failed to offer any plausible explanation or evidence to show that these two reports were made in error.

Therefore, considering that the initial medicals do not corroborate the claimant's testimony concerning a work-related back injury; the medical evidence suggesting prior back problems; the claimant did not allege a back injury on the Form N (which was not completed until October 17, 2001,

some three months after the incident); and given the fact that the claimant did not allege a work-related back injury until some 14 months after the incident of July 16, 2001, the Full Commission finds that it is more probable than not that the claimant's current back problems did not arise out of and in the course of her employment with the respondent. As a result, the Full Commission affirms the administrative law judge's finding that "Claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable low back injury arising out of and during the course and scope of her employment on July 16, 2001,"

We recognize that Dr. Oberlander has opined that the claimant's pain and MRI findings are causally connected to the incident of her tripping and stumbling while at work. However, the Commission is entitled to review the basis for a doctor's opinion in deciding the weight and credibility of the opinion and medical evidence. Maverick Transp. v. Buzzard, 69 Ark. App. 128, 10 S.W.3d 467 (2000). In the present matter, the Full Commission places minimal weight on the opinion of Dr. Oberlander because his opinion was based on an inaccurate history provided to him by the claimant.

Based on our *de novo* review of the entire record, the Full Commission affirms the administrative law judge's

finding that "Claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable low back injury arising out of and during the course and scope of her employment on July 16, 2001. Therefore, this claim is denied and dismissed. IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

The Majority is finding that the claimant has not established that she suffered a back injury on July 16, 2001, the date she suffered an admittedly compensable injury to her ankle and knee. The basis for this decision is the Majority's evaluation of the claimant's medical records and their finding that she lacks credibility as a witness. Because I disagree with both of those conclusions, I respectfully dissent from the Majority's decision.

The dispute in this case turns upon whether the claimant suffered an injury to her lower back in her

admittedly job related accident of July 16, 2001. In controverting this claim, the respondent has repeatedly asserted that the claimant did not sustain a back injury in the accident since she did not report symptoms or complaints of her back for fourteen months following the injury. However, this assertion is not supported by the medical evidence.

The doctor the claimant first saw following her injury was Dr. Robert Rook, a general practitioner. Dr. Rook treated the claimant for an ankle and knee injury without success. However, in his progress note of November 27, 2001, he reports that the claimant was having back pain and administered a straight leg raising test. Further, when the claimant saw Dr. Kenneth Rosenzweig, a consulting physician she saw at the direction of the respondent, it was noted in the doctor's October 22, 2001 report that the claimant had chronic low back pain in addition to her ankle and knee injury. The claimant also testified that she had advised Dr. Rook, Dr. Rosenzweig, and later, Dr. Reginald Rutherford, another consulting physician the claimant saw at the direction of the respondent, about her ongoing back pain. However, none of those doctors apparently considered

the possibility that her back condition could have been connected to her leg problem.

Another physician the claimant saw was Dr. Scott Bowen. Dr. Bowen, like the claimant's other physicians, was not able to determine the source of the claimant's knee and ankle pain. However, it is interesting to note that in the history section of his April 30, 2002 report, he states that the claimant had previously undergone an MRI scan of her lumbar spine and that the results were normal. However, that information was not correct. The claimant did not undergo an MRI of her lumbar spine until much later. Apparently Dr. Bowen had become confused in regard to the knee and ankle MRI the claimant had undergone. Since his opinion that there was no further treatment for the claimant was based on his misunderstanding of the claimant's prior diagnostic tests, I do not see how his opinion could be given any weight or credit. Eventually, the claimant was released with no impairment rating with her doctors saying that they had no treatment to offer her. It was not until the claimant saw Dr. David Oberlander, a Conway neurologist, that a problem with the claimant's back was noted. At his direction, the claimant underwent an MRI scan which found that she was suffering

from an annular tear at L4-L5. Because of this finding, the claimant was also seen by Dr. Anthony Russell, a Little Rock neurosurgeon. Dr. Russell had the claimant undergo a discogram performed by Dr. Thomas Hart, which confirmed the existence of the claimant's disc defect. Drs. Oberlander, Russell, and Hart were all of the opinion that the claimant's leg problems were the result of the annular tear and, likewise, they all opined that the annular tear resulted from the claimant's injury of July 16, 2001.

The Majority justifies disregarding these doctors' opinions by making the blanket statement that they were relying on an inaccurate history from the claimant. However, neither the respondent in their brief nor the Majority in their opinion specifically note any erroneous information the doctors received from the claimant. The doctors were aware that the claimant had been suffering from chronic back pain and that the bulging disc found on the MRI was probably the result of preexisting degenerative disc disease. Their opinions were based, not on a history from the claimant, but the existence of an objectively verified injury; the occurrence of an admittedly job related accident; and their own medical knowledge and experience.

The Majority also notes that the claimant continued working after her injury and later, after leaving the employment of the respondent, and went to work for another employer. She then continued working until becoming disabled in September 2002, over a year after the injury. Those facts are then relied upon to suggest that the claimant's back injury did not occur until 2002. In my opinion, the claimant is being penalized because she was a hard worker who continued to work in spite of the pain and limitations of her injury, and because her doctors were unable to correctly diagnose the etiology of her problem. It is tempting to suggest that the claimant would have been better off to refuse to work and to have complained continuously to her doctors about her pain symptoms. In that case, the doctors might have been more aggressive in their treatment, they might have correctly diagnosed her injury sooner, and the respondent would not have been able to argue that the claimant did not have any back problems because she continued to work. On the other hand, since our frequent rationale for denying claims is that a claimant who doesn't return to work, or who excessively complains about an injury, is malingering, poorly motivated, or

seeking secondary gain, I do not know what the best advice would be for someone in the claimant's position.

I find that the claimant's testimony, when combined with the opinions of Drs. Oberlander, Hart, and Russell is sufficient to establish the requirements of a compensable injury to her lower back. I would therefore award her appropriate benefits based upon that injury. For that reason, I must respectfully dissent from the Majority's decision in this case.

SHELBY W. TURNER, COMMISSIONER