

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F001480 & F009947

NICOLE R. SMITH, EMPLOYEE	CLAIMANT
CARE MANOR OF BAXTER COUNTY, EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, CARRIER	RESPONDENT

OPINION FILED APRIL 22, 2005

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

Claimant represented by HONORABLE FREDERICK S. SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondent represented by HONORABLE BETTY J. DEMORY, 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 May 7, 2004.

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

1. The employee/employer relationship existed on February 5, 2000 and on February 26, 2000.
2. The claimant's average weekly wage during the relevant period was \$269.00.
3. The respondents have controverted any benefits not already paid.

4. The claimant has failed to establish by a preponderance of the evidence the existence of a compensable injury supported by objective findings.

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

The Majority is affirming and adopting the Administrative Law Judge's denial of this claim for benefits. For the reasons set out below, I find that the denial is in error, and that the Administrative Law Judge's decision should be reversed.

The claimant was employed in the respondent's nursing home when she reported injuries to them on November 18, 1999, February 5, 2000, and February 26, 2000. However, her claim filing with the Commission inadvertently omitted the November 18, 1999 date. At the hearing, it was realized that the claimant had sustained back injuries while performing almost exactly the same functions on November 18, 1999 and February 5, 2000. Specifically, she was injured while assisting a patient rising out of a wheelchair. The respondent had apparently accepted the November 18, 1999, claim and had paid the certain benefits based upon the injury of November 18, 1999. However, the Administrative Law Judge, whose findings and conclusions are being adopted, made a number of inconsistent findings regarding this claim.

Among those findings, are the following:

In the present case, the medical evidence, in conjunction with relevant witness testimony, persuades me by the preponderance of the evidence that the claimant began to experience low back problems as a result of a series of lifting incidents at work at Care Manor in late 1999 and early 2000. The medical treatment provided following these incidents is well documented in the medical records. However, while the claimant may have had some degree of intermittent back complaints prior to the first lifting incident at work in November 1999, I find, based upon the medical reports and the relevant witness testimony that the work related lifting incident caused the need for medical treatment to the claimant's back that she received in late 1999 and early 2000. Therefore, the claimant has established by a preponderance of the evidence that she sustained a series of accidental injuries arising out of and several specific lifting incidents at work which caused internal physical harm, required medical services, and caused temporary disability.

In spite of that above conclusion, the Majority is denying the present claim. The rationale for this action is a lack of objective evidence establishing an injury. This is a rather surprising conclusion, given the medical record.

As noted by the Administrative Law Judge, many cases have held that muscle spasms are considered objective

findings. However, after noting that the claimant's medical records refer to her as having such spasms, it is then concluded that the references to the claimant's muscle spasms are not sufficiently documented to constitute objective evidence.

That conclusion , if followed, would require doctors to specifically document the etiology of muscle spasms in every report. This is an unrealistic standard when it is considered that initial medical treatment is generally provided by an emergency room or family physician who usually documents his patient visits with hurried handwritten notes using multiple abbreviations and an occasional illegible comment. It would certainly make the jobs of attorneys, judges, and others who are called upon to interpret medical records easier if doctors would modify their recording procedures so that all notes are neatly typed and fully explain all of the doctor's observations and conclusions. However, it is unrealistic for us to expect doctors who may be seeing a large volume of patients to modify their established practice just to make it easier on us. It also unfair on the parties to penalize them because a doctor was not as clear as we would wish. I find that a

notation in a medical report in which a doctor notes the presence of "spasms" is sufficient to meet the standards for objective medical findings, as that term has been defined by the Arkansas Courts on innumerable occasions.

I also note that the claimant's doctors prescribed Flexeril for treatment of her injuries. This medication is what is commonly described as a "muscle relaxer" which is used by doctors to relieve muscle spasms. In the recent Supreme Court case of Fred's Inc. v. Jefferson, ___ Ark. ___, ___ S. W. 3rd ___ (March 31, 2005), it was held that a doctor's prescription of Flexeril was evidence of an objective finding sufficient to meet the objective evidence requirements of the Arkansas Workers' Compensation Act. Significantly, the Jefferson Opinion affirms a prior Commission and Court of Appeals decision which had reached the same result. I find that the claimant has clearly met her burden of establishing not only the occurrence of a job related accident, as found by the Administrative Law Judge, but that the presence of muscle spasms as noted by her treating physicians and their prescriptions of anti-spasm medication is sufficient to establish the presence of objective findings as required by A.C.A. §11-9-102 (4) (D).

See Fred's, Inc. v. Jefferson, *supra*, and Estridge v. Waste Management, 343 Ark. 279, 33 S. W. 3rd 167 (2000). I

therefore find that the claimant established the occurrence of job related injuries on November 18, 1999, February 5, 2000, and February 26, 2000.

The Majority is also holding that the statute of limitation provided in A.C.A. §11-9-702 (b) (1) bars any claim for benefits which the claimant might be entitled to receive based upon her injury of November 18, 1999. In considering this issue, the Administrative Law Judge cited Eden v. Superior Marble & Glass, 346 Ark. 487, 58 S. W. 3rd 369 (2001), and Cook v. Southwestern Bell Telephone Company, 21 Ark. App. 29, 727 S. W. 2nd 862 (1987).

In Eden, the Supreme Court stated that the failure of the claimant to specify a date of injury in a claim could be considered by the Commission in determining credibility but, " ...the statute does not require that the exact date be identified." The Court in Cook noted that the claimant was filing an additional claim for benefits where the respondent had already established their knowledge of the claim based upon their payment of benefits. The Court held that a letter identifying the claimant in connection with

unpaid benefits was sufficient to constitute a valid claim.

The claimant's contention is that the AR-C Form filed in September of 2000 which specifically identified the injury dates in February of 2000, and requested benefits resulting from back injuries, was sufficient notice to advise the respondent that the claimant would also be seeking benefits on the November injury, which had occurred less than three months prior to the first February injury and less than a year prior to the filing of the claim. Significantly, the respondent had paid medical and disability benefits to the claimant because of the injury she had sustained in November of 1999, which also involved a low back injury.

After considering the Supreme Court's holding in Eden, and the result reached by the Court of Appeals in Cook, the Administrative Law Judge made the following statement:

In light of the Court's reasoning in Eden and Cook, the Arkansas Courts may ultimately agree with the claimant's attorney's current argument in the present case that his filing on September 9, 2000, were adequate to accomplish both a claim for original benefits of the February 2000 injuries and a claim for additional benefits for the November 18, 1999 injury,

particularly since the respondent had notice of, and apparently paid benefits on, the November 18, 1999 injury.

However, despite the apparent conclusion that the claimant's September of 2000 claim filing was sufficient to satisfy the standards of Eden and Cook (a conclusion with which I agree), the Majority reaches the opposite result. Even though the employer was made aware of the November 18, 1999 injury in an incident report, and the claimant received medical treatment at their direction for which they paid, it is being held that the claimant did not sufficiently identify what event she was referring to in her claim form.

I find that the Court of Appeals decision in Cook v. Southwestern Bell, *supra*, is controlling. Pursuant to the holding of that case, I find that the timely claim filing in September of 2000 provided the respondent sufficient notice that the claimant was pursuing a claim for her benefits on all her injuries, including the one sustained in November of 1999.

In short, I believe that the Administrative Law Judge made the correct factual findings. That is, the claimant did suffer injuries to her back while assisting patients at the respondent employer's nursing home. However,

because of incorrect application of the relevant case law, he and the Majority are denying this claim. For that reason, I find that the Administrative Law Judge should be reversed and that the claimant sustained compensable injuries on the dates referred to above, and that she filed a timely claim for benefits for those accidents. I further find that she should be awarded all reasonable and necessary medical expenses and appropriate disability benefits.

For the reasons stated above, I respectfully dissent.

SHELBY W. TURNER, Commissioner