

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F212244

KIMBERLY K. TAYLOR, EMPLOYEE	CLAIMANT
BALDWIN PIANO & ORGAN CO., EMPLOYER	RESPONDENT
LIBERTY MUTUAL INSURANCE CO., INSURANCE CARRIER	RESPONDENT

OPINION FILED FEBRUARY 9, 2005

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

Claimant appeared PRO SE.

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

Decision of the Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed November 4, 2003. The administrative law judge found, among other things, that the claimant sustained an injury arising out of and in the course of her employment on August 12, 1998. After reviewing the entire record *de novo*, the Full Commission finds that the claimant failed to establish a compensable injury by medical evidence supported by objective findings. The Full Commission therefore reverses the opinion of the administrative law judge, and we dismiss this claim.

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. "Objective findings" are those findings which cannot come under the voluntary control of the patient. See, Ark. Code Ann. § 11-9-102(4) (D); Ark. Code Ann. § 11-9-102(16). The claimant must prove by a preponderance of the evidence that she sustained a compensable injury. Ark. Code Ann. § 11-9-102(4) (E) (i).

In the present matter, the claimant contended that she injured her right elbow as the result of a specific incident arising out of and in the course of employment. The claimant testified that her elbow became swollen and painful after the alleged accidental injury. However, the medical evidence does not corroborate the claimant's testimony with regard to swelling. None of the physical examinations of the treating physician revealed any swelling or other

objective medical findings. X-rays of the claimant's elbow were normal. Nor is there any other evidence in the record of objective medical findings. Without objective medical findings, the claimant cannot prove by a preponderance of the evidence that she sustained a compensable injury.

The Full Commission therefore reverses the opinion of the administrative law judge. We find that the claimant failed to establish a compensable injury by medical evidence supported by objective findings. Our finding renders moot the respondents' contention that the claim is barred pursuant to Ark. Code Ann. § 11-9-702. This claim is denied and dismissed.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that Claimant failed to establish a compensable injury by medical evidence supported by objective findings. After conducting a de novo review of the entire

record, I find that the Claimant sustained an injury arising out of and in the course of her employment and that further medical treatment recommended by Dr. Stroope, to include surgery, is reasonably necessary medical treatment relative to her compensable injury. Therefore, I find that the Administrative Law Judge's opinion should be affirmed.

At the hearing, Claimant testified that while discharging her employment duties on August 12, 1998, she was using a hand-held buffer to polish the keys on a piano. The thread from the buffer pad was caught by a key and twisted Claimant's elbow. Claimant testified that she felt a "pop" in her right elbow and pain. There is no dispute that Claimant reported her elbow pain to her supervisor and that she saw Respondent's doctor soon thereafter. Claimant was eventually diagnosed as having acute lateral epicondylitis of her right elbow, a condition which now requires surgery.

I disagree with the majority's statement that claimant's testimony was not corroborated by any medical evidence. Dr. Stroope, noted the following in a progress note of October 2, 1998:

10-2-98

Kim . . . presents today with a CC of right elbow pain. She had a history of injuring her

right elbow at work on 8-19-98 when she was buffing keys at Baldwin Piano. She had a steroid injection into her right elbow last week with some minimal relief and has been on an oral anti-inflammatory agent.

Examination of her right elbow today reveals tenderness over the right epicondyle consistent with lateral epicondylitis. Provocative testing is also positive.

Claimant received several injections from Dr. Stroope from October of 1998 through April of 2000. On April 18, 2000, Dr. Stroope's clinic notes continued to diagnose Claimant with lateral epicondylitis. Dr. Stroope's notes also noted that if the Claimant's symptoms were not alleviated then he would consider a surgical epicondyle release. Thereafter, Claimant was seen on June 8, 2000, July 18, 2000, October 17, 2000 and February 17, 2001 for further injections.

On April 16, 2001, Claimant saw Dr. Stroope for another injection to her right elbow. At that visit, Dr. Stroope discussed with the Claimant the possibility of the need for surgery. On October 9, 2001, Dr. Stroope opined in relevant part:

... At this point, she really wishes to continue to have one more steroid injection, but if her pain recurs, I would highly recommend lateral epicondyle release. We will see her back as needed and if her pain recurs, then we will counsel her in surgical release of the extensor mechanism of the lateral epicondyle.

On January 10, 2002, Claimant saw Dr. Stroope again. At that time, Dr. Stroope encouraged her to try to obtain approval from her workers' compensation carrier for surgery on her elbow. Claimant testified that her efforts at obtaining approval were unsuccessful. Respondent refused to authorize the treatment.

Claimant's physician has stated unequivocally that claimant's epicondylitis is related to her employment. Further, I find that objective medical findings establish the presence of epicondylitis, which is consistent with Claimant's complaints. The documentary evidence shows that medical services were required as a result of the work-related incident and that further medical treatment is needed to correct Claimant's condition. Therefore, after conducting a de novo review of the entire record, and for the reasons discussed herein, I find that Claimant has proven by a preponderance of the evidence that she is entitled to reasonable and necessary medical treatment in connection with her work-related injury to include an epicondyle release. Accordingly, I find that the decision of the Administrative Law Judge must be affirmed.

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SHELBY W. TURNER, Commissioner