

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F406040 & F404667

DELILAR BURGESS, EMPLOYEE	CLAIMANT
HOSPICE HOME CARE, INC., EMPLOYER	RESPONDENT
COMMERCE & INDUSTRY INSURANCE, CARRIER	RESPONDENT

OPINION FILED FEBRUARY 3, 2006

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

Claimant appears *pro se*.

Respondent represented by HONORABLE JOHN P. TALBOT, Attorney at Law, Pine Bluff, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed March 30, 2005.

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

1. There was an employer-employee relationship on April 20, 2004 and June 10, 2004.
2. The compensation rate is \$164.

3. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury on June 10, 2004, supported by objective findings.

4. Respondents are estopped from denying liability for the medical services at the Baptist Hospital Emergency Room on June 10, 2004 and the follow-up care at Concentra at the employer's direction.

The claimant alleges that he sustained a compensable injury that is governed by the Arkansas Workers' Compensation Act, A.C.A. § 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.

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

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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.

CONCURRING AND DISSENTING OPINION

_____I concur with the majority finding that the respondents are estopped from denying liability for the medical services at the Baptist Hospital Emergency Room on June 10, 2004 and the follow-up care at Concentra at the employer's direction. However, I must respectfully dissent

from the finding that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury on June 10, 2004, supported by objective findings.

_____The claimant sustained injuries in two accidents during the time she was employed by the respondent. The first injury was the result of an admittedly job related incident occurring on April 20, 2004, and a second occurring on June 10, 2004, which the respondent has controverted in its entirety. The claimant has alleged that, as a result of those accidents, she has sustained injuries to her back, neck, and head, and has become entitled to certain temporary disability benefits and needs additional medical treatment. Previously, the respondent has provided to her medical benefits associated with her first injury. However, because of their controversion, they have not provided her with any medical or disability benefits since June 10, 2004.

_____After a hearing, an Administrative Law Judge found that the claimant had in fact sustained a compensable injury on April 20, 2004 but that she failed to establish that her

accident on June 10, 2004 was compensable in that there was no objective evidence supporting the existence of an injury. Based upon my de novo review of the record, it is my opinion that the claimant did offer sufficient evidence to prove a compensable injury.

At the time of her injury, the claimant was employed as a home health nurse by the respondent employer. Generally, the claimant's duties required her to provide in-home assistance for her employer's clients. It was performing these duties that the claimant sustained a compensable injury to her lower back in April 2004. According to the claimant, this injury occurred when she was attempting to help an elderly person out of a chair. The respondent accepted this injury as compensable and provided the claimant appropriate benefits. At the hearing, the claimant testified that her back had substantially recovered from this injury.

_____ However, because of the restraint placed upon her job activities following the first injury, the claimant had been assigned to provide assistance to some of the

employer's clients who were in Parkview Nursing Home. On June 10, 2004, while the claimant was working at Parkview, she went into the patient's room and drew back the curtain surrounding the bed in which the patient was sleeping. However, at that time, she stepped in a puddle of water near the bed and fell to the floor.

_____The claimant promptly reported this accident and there does not appear to be any dispute that the fall in fact occurred. There does appear to have been some confusion, at least initially, as to who the claimant's actual employer was when the injury was reported. Consequently, the claimant was eventually taken to the Baptist Medical Center by certain employees of Parkview in one of the nursing home's vans. Later, the respondent referred the claimant to Concentra Medical Center for further treatment.

The Administrative Law Judge's decision turns upon her conclusion that the medical records do not provide any objective medical evidence of an injury in regard to the fall on June 10, 2004. In my opinion, the Administrative Law

Judge has overlooked certain medical evidence relating to that accident. Specifically, when the claimant became dissatisfied with the treatment she was receiving from Concentra, she sought, on her own and at her own expense, emergency treatment from University of Arkansas for Medical Science's emergency room on June 15, 2004. In reports generated from that visit, the claimant is documented as having reported an injury when she slipped in a puddle of water. The emergency room physician also notes the presence of a mildly swollen and tender ankle and the presence of muscle spasms in that region of her body.

In my opinion, the medical report from UAMS is sufficient to establish the occurrence of a compensable injury. As has been held by this Commission and the Arkansas Courts on many occasions, muscle spasms are considered to be objective evidence sufficient to establish the occurrence of a compensable injury. Estridge v. Waste Management, 343 Ark. 276, 33 S.W.3d 167(2000).

On the basis of the discovery of muscle spasms and swelling only a few days after the accident of June 10,

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2004, it is my opinion that the claimant did establish that she sustained a compensable injury on that date. Once that threshold is reached, the next issue is what benefits the claimant is entitled to receive. Since the claimant is entitled to receive such reasonable and necessary medical treatment as appropriate for her injuries, in my opinion the respondent is obligated to pay for the treatment the claimant received from Concentra and any other authorized medical provider following her injury, as well as any other medical providers the claimant received treatment from subsequent to the respondent's controversion and refusal to provide further medical benefits. It is also my opinion that the claimant is entitled to temporary total disability benefits from the date of her injury at least through July 8, 2004, when she advised the Employment Security Division that she was able to return to work.

Based upon my review of the medical evidence in this case, I am convinced that the claimant did offer sufficient evidence to find that she sustained a compensable injury on June 10, 2004, and that she is entitled to all

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appropriate benefits. The benefits would include reasonable and necessary medical treatment and temporary total disability benefits at least through June 8, 2004.

Based upon the foregoing reason, I concur with the majority finding that the respondents are estopped from denying liability for the medical services at the Baptist Hospital Emergency Room on June 10, 2004 and the follow-up care at Concentra at the employer's direction, and respectfully dissent from the finding that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury on June 10, 2004, supported by objective findings.

SHELBY W. TURNER, Commissioner