

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F510183

DENEA M. HARDIN,
EMPLOYEE

CLAIMANT

HOLIDAY INN -- AIRPORT,
EMPLOYER

RESPONDENT

WAUSAU UNDERWRITERS INSURANCE,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 12, 2006

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

Claimant represented by the HONORABLE TERENCE C. JENSEN,
Attorney at Law, Benton, Arkansas.

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

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed March 27, 2006. In said
order, the Administrative Law Judge made the following
findings of fact and conclusions of law:

1. Claimant has failed to prove by a
preponderance of the credible evidence that
she sustained a compensable injury arising out
of and during the course and scope of her

employment on April 27, 2005, or that any work-related injury she may have sustained was the major cause of her condition.

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.

The claimant alleges that she 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.

Therefore we affirm and adopt the March 27, 2006 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, by affirming and adopting the decision of the Administrative Law Judge as their own, finds that the claimant did not sustain compensable injuries to her neck, back, hip, or right leg. In making this finding, they opine that the claimant did not have objective findings to support a compensable injury. After a de novo review of the record, I find that objective findings did exist. Accordingly, I must respectfully dissent.

The claimant in the present case was a waitress for the respondent. She had worked part time

for the employer for three years while simultaneously attending school to receive a degree, in which she listed dancing as a minor. The claimant testified that around January or February 2005, she fell in her bathtub and injured her right hamstring. She testified that as of April of 2005 she still had pain in the hamstring, but that the pain had since resolved.

The claimant further testified that on April 27, 2005, she was working when she slipped and fell on a wet floor. She said that after reporting her accident to management, she sought medical attention at the emergency room. At that time she was given an immobilizer for her knee, given pain medication, and was sent home. She also testified that her pain prior to the fall at work was not as severe and that she did not have discoloration of her leg until after her work-related fall. She also denied having any back or shoulder pain as a result of her fall in the bathtub.

On May 2, 2005, the claimant was treated by Dr. Russell Burton. The claimant presented with pain in her left shoulder, her neck, her back, and her lower

right extremity. The report indicates that the claimant reported slipping and falling on a wet floor. It further provides that while the claimant did not have swelling in her knee, she did have a "popping of the patella." The claimant was diagnosed with, "Knee Strain, Back Strain and Neck Strain from fall with associated contusion to the knee as well, probably resolving." He also ordered an MRI which was returned with negative results.

A note from Dr. Burton, dated June 2, 2005, indicates that the claimant continued to complain of right lower extremity pain. It also provides that the claimant's MRI was returned as normal.

On June 16, 2006, Dr. Burton treated the claimant again and indicated that the claimant continued to suffer from pain in her right extremity. Dr. Burton noted that the claimant had a normal range of motion of her back, but with a "markedly positive SLR on the right at less than 45." The report from that date further provides, "The skin of the left lower extremity over the calf does have a mottled appearance that is not present

on the left calf." Dr. Burton indicated that the claimant had chronic right lower extremity radicular pain and opined, "I think it is certainly neuropathic in origin post-injury." He referred the claimant to a chronic pain specialist.

The claimant was treated by Dr. Christopher K. Mocek on July 26, 2005. Dr. Mocek opined that the claimant's MRI was negative, but that he believed the claimant was having "pain from lumbosacral strain and inflammation fo the L5 and S1 nerve roots on the right." He further opined that the claimant could possibly have a tear in her L5-S1 disc and indicated that in the past, "We have seen this on occasions where patients have clearly radicular pain in a dermatomal pattern without any MRI findings." He scheduled the claimant for an epidural steroid injection. A doctor's report from the following day indicates, "There is some errythematous skin discoloration in the right L5 and S1 dermatomes when compared with the left."

On August 17, 2005, the claimant submitted to an epidural steroid injection. A second injection was performed on October 3, 2005.

At the time of the hearing the claimant testified that she continued to have ongoing problems associated with her fall. She said that while her condition had improved, she still had to take medication and needed further medical care.

The Majority, by virtue of its reliance on the decision of the Administrative Law Judge, finds that the claimant failed to prove she had objective findings to show a compensable injury. In making this assertion, they opine that Dr. Burton's opinion appeared to be based on the claimant's subjective reports. They further note that as of June 2, 2005, Dr. Burton indicated the etiology of her condition was unknown and that it had been four months since her initial injury and two months since her second injury. Finally, they find that the Dr. Mocek's only indication of an objective finding was a positive straight leg test.

After reviewing the record, I am convinced that the claimant did sustain compensable injuries and that those injuries were shown by objective findings as shown throughout the medical records. Furthermore, I find that those findings were not based only on the claimant's subjective complaints.

I first note the May 2, 2005, report from Dr. Burton. The pertinent portion of the report indicates, "I see no swelling to the knee and range of motion is normal. There is a popping of the patella though it does not sublux out of the patella groove." In my opinion, this language indicates that the physician observed the popping himself. Accordingly, the "popping" would amount to an objective finding. Likewise, later in the report, he diagnosed the claimant with a contusion of the knee, indicating the existence of an objective finding to the claimant's knee. The Majority asserts that those notations were based only on the claimant's subjective complaints. I am unconvinced by this argument, particularly given the fact that the note contains medical terminology such as "sublux".

Additionally, it is clear from the words, "I see" that the report was being written from the observations of the doctor rather than simply on the claimant's subjective reports.

In my opinion the report from June 16, 2005, also shows objective findings. The report specifically indicates that the claimant had "mottled" skin. While the doctor indicated that the skin on the left leg was mottled, it is clear when looking at the language of the note that he simply erroneously noted the wrong leg as being mottled. Furthermore, the appearance of the discolored leg corroborates the testimony of the claimant and her mother that she suffered from discoloration of her leg after falling at the respondent's work site.

I also find that while Dr. Mocek was unable to explain the etiology of the claimant's back pain, that does not preclude a finding that the claimant sustained a compensable injury. The claimant testified that prior to the fall at work she did not suffer from back pain or skin discoloration in her right leg. I find this

testimony to be credible. Additionally, Dr. Mocek specifically indicated that the claimant could present with symptoms and have a condition that was not shown by an MRI.

Though the Majority finds that Dr. Mocek's December 9, 2005, letter indicated the only objective sign was a positive straight leg test, that finding is in error. In fact, Dr. Mocek's letter indicates that the claimant suffered from, "Positive straight leg raising test + Right L5 dermatome." When reviewing Dr. Mocek's reports, it is clear that this refers to discoloration in the claimant's back. When considered with Dr. Mocek's assertion that an MRI did not show all injuries and his ongoing care for the claimant, it is apparent that Dr. Mocek believed the claimant's symptoms and injury were legitimate and shown by objective medical findings.

I recognize that the claimant suffered a fall around January or February of 2005. Likewise, I recognize that the notes from Dr. Mocek and Dr. Burton seem to indicate that the claimant's onset of pain began

around that time. However, I note the claimant's testimony that her symptoms in her leg were more severe after the accident and that she had skin discoloration in her right leg and suffered pain in her neck, back, and shoulder after the accident whereas before she did not. Additionally, the evidence indicates that the claimant had to work on light duty until after she fell at work, which to me, indicates that there was a change in her condition after her fall at work. Finally, I note that while the claimant testified she had previously torn her hamstring, there is absolutely no medical evidence in the record to show the claimant presented with knee popping or discoloration in her leg. Accordingly, I can only conclude that the claimant did sustain compensable injuries from her fall at work.

For the aforementioned reasons, I must respectfully dissent from the Majority's opinion.

SHELBY W. TURNER, Commissioner