

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F501566

LORI HATFIELD,  
EMPLOYEE

CLAIMANT

WAL-MART ASSOCIATES, INC.,  
EMPLOYER

RESPONDENT

CLAIMS MANAGEMENT,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED APRIL 7, 2006

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

Claimant represented by the HONORABLE EVELYN BROOKS,  
Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE TOD BASSETT,  
Attorney at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Affirmed and  
Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the  
Administrative Law Judge filed November 10, 2005. In  
said order, the Administrative Law Judge made the  
following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation  
Commission has jurisdiction of this claim.

2. On January 26, 2005, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$122.00 for temporary total disability and \$81.00 for permanent partial disability.

4. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her hand, arms and neck when she slipped and fell on January 26, 2005.

5. The claimant has proven by a preponderance of the evidence that the ganglion cyst on her right foot is a result of a traumatic injury which she experienced on June (sic) 26, 2005 as opined by Dr. Mitchell.

6. Therefore, the respondents should be responsible for the payment of the medical treatment for this claimant's ganglion cyst on her right foot.

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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

The Full Commission notes that clerical errors exist in the findings and conclusions and the Order of the Administrative Law Judge's opinion. On page 12 the Administrative Law Judge in finding number 5 notes the date of injury as June 26 rather than January 26. In the Order, the Administrative Law Judge notes the date of injury as January 6 rather than January 26.

We therefore affirm the November 10, 2005 decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl.

2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

---

OLAN W. REEVES, Chairman

---

SHELBY W. TURNER, Commissioner

Commissioner McKinney concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

I must respectfully concur, in part with, and dissent, in part from, the majority's opinion. Specifically, I concur with the finding that the claimant failed to prove by a preponderance of the evidence that she sustained a compensable injury to her hand, arms, and neck, when she slipped and fell on January 26, 2005. However, I must dissent from the finding that the claimant has proven by a preponderance of the evidence that she sustained a compensable injury

to her right foot which resulted in a ganglion cyst and for which she is entitled to benefits.

On appeal, the respondent asserts that the claimant has failed to prove by a preponderance of the evidence, specifically by objective medical findings, that she sustained an injury to her right foot and ankle on January 26, 2005, when she fell at work. My carefully conducted de novo review of the entire record shows that the claimant has failed to establish a causal connection, supported by objective medical findings, between her right foot ganglion cyst and the incident which allegedly occurred at work on the above date.

The claimant, a part-time deli worker for the respondent employer and a full-time, self-employed beautician, testified that she fell while discharging her employment duties for the respondent employer on January 26, 2005. The claimant contends that, among other things, she twisted her right ankle and foot in a drain during this incident, which eventually caused the formation of a ganglion cyst on her right foot. However, the employee accident report which she completed and signed on February 2, 2005, reflects that the claimant

reported injuries to her left wrist, hip, and back, but none to her right foot or ankle. Moreover, when she first sought medical treatment for her alleged injuries some four days afterwards, she did not report any injury to her right foot and ankle. Rather, a workers' compensation worksheet apparently provided by St. John's hospital and filled out and signed by the claimant on February 2, 2005, reflects possible injuries to her left wrist, arm, and hip, with no mention of her right ankle or foot. Further, on that same date the claimant told her treating physician, Dr. Randal Spurgin, that she had sustained injuries to her left side as a result of this alleged incident. More specifically, aside from a sprained wrist, the claimant complained to Dr. Spurgin of neck, left shoulder, and mid-back discomfort since the incident, with numbness extending from her left shoulder down into her arm. In his report of this visit, Dr. Spurgin noted that the claimant has a "past history of cervical disease about 10 years ago up in Springfield". In addition, Dr. Spurgin noted that the claimant had been previously diagnosed with herniated lumbar discs, and that she experienced chronic pain in

her neck and lumbar back, for which she had been prescribed Flexeril and Vicodin. Pursuant to his examination, Dr. Spurgin diagnosed the claimant with cervical and thoracolumbar sprain, for which he prescribed the claimant medications and placed her on work restrictions.

The claimant was next seen by Dr. Spurgin for her neck and back symptoms on February 9, 2005, at which time he noted improvement in her condition. Accordingly, Dr. Spurgin instructed the claimant to finish her prescription medications, and he returned her to regular duty with temporary lifting restrictions of no more than 20 pounds. Once again, the claimant made no complaints to Dr. Spurgin at that time of problems with her right foot or ankle.

Finally, on April 14, 2005, nearly three months following her alleged work related incident, the claimant presented to Dr. Charles Horton with a mass in her right foot. Dr. Horton referred the claimant to orthopaedic surgeon, Dr. Braye Mitchell, who first examined her on April 17, 2005. In his clinic note of that examination, Dr. Mitchell stated that the claimant

reported that her symptoms began approximately a month after her alleged injury, with a painful mass arising on her right ankle, then spreading down the lateral side of her right foot. "Interestingly," wrote Dr. Mitchell, "she had a similar mass on [the] other foot that took five surgeries to get rid off." Dr. Mitchell noted that this former mass was of unknown etiology. The claimant testified that this mass, which had appeared during her childhood, was, in fact, a ganglion cyst.

An MRI taken on April 27, 2005, confirmed the presence of a ganglion cyst in the claimant's right foot. After steroid injections were unsuccessful in resolving this latest cyst, the claimant underwent surgery on May 4, 2005, to remove it.

In a letter dated June 28, 2005, Dr. Mitchell opined that the claimant's right ganglion cyst was post-traumatic in origin, perhaps resulting from a capsular tear in one of the lateral small joints of the claimant's right foot. Dr. Mitchell added, "She did not have it before her injury, and therefore I do not have any reason to suspect it was anything but caused by that injury." In contrast to this opinion, however, Dr.

Spurgin drafted a letter on June 30, 2005, in which he stated:

When I first saw Ms. Hatfield initially, 2/2/05, she had no complaints of injury or pain in her right foot or ankle. It was my impression that when she slipped into the drain and fell, her injury did not involve her ankle and when I checked reflexes in the knees and ankles, I noticed no abnormalities. She had no swelling or discoloration and checking for deep tendon reflexes was not painful.

Finally, a review of the medical records reveals that the claimant had been involved in a car accident nearly a year earlier on January 29, 2004, in which she had injured her right foot and ankle. X-rays of the claimant's right foot and ankle taken at the time of that accident showed no broken bones, but pain and swelling of her right foot and ankle were noted and treated.

Under Arkansas Law, the claimant bears the burden of proving compensability by a preponderance of the evidence. Ark. Code Ann. §11-9-102(5); See also, Ark. Code Ann. §11-9-704(c)(4). In order to prove entitlement to workers' compensation benefits, the claimant must prove by a preponderance of the credible evidence that she suffered an injury in the course and scope of her employment from a specific incident, which caused physical harm. Ark. Code Ann. §11-9-102(4)(A)(i). In addition, the injury must be supported by objective findings, which are defined as by Ark. Code Ann. § 11-9-102(16) as those findings which cannot come under the voluntary control of the patient. *Id.* Moreover, in order to prove a compensable injury, a claimant must prove that a causal relationship exists between her employment and the injury. McMillan v. U.S. Motors 59 Ark. App. 85, 953 S.W.2d 907 (1997). Objective medical evidence is necessary to establish the existence and extent of an injury, but not essential to establish the causal relationship between the injury and a work-related accident. Horticare Landscape Mgt. V. McDonald, 80 Ark. App. 45, 89 S.W.3d 375 (2002).

The existence of the claimant's ganglion cyst, which presented itself after the claimant's alleged injury of January 26, 2005, is undeniable. Even in view of Dr. Mitchell's opinion that the claimant's cyst formed as a result of the her alleged injury, however, it is unlikely that a causal relationship exists between the two events. First, the claimant testified that during her shift on January 26, 2005, she was turning and stepping away from a sink when her right foot, which was on the edge of a 9 to 12 inch open drain, twisted and slid into the drain. This, in turn, caused her left foot to slip out from underneath her, causing her to fall. Although the claimant testified that she immediately reported the incident to a night manager, she waited four days before seeking medical treatment for her alleged injuries. The claimant further testified that when she initially saw Dr. Spurgin for her injuries, her right foot and ankle were tender and sore. Yet, medical documents demonstrate that the claimant mentioned nothing to the examining physician about an alleged injury to her foot or ankle. The claimant attempted to reconcile this omission by stating that her

twisted ankle "wasn't concerning me as much as being able to use my hands because that's my livelihood". However, the claimant testified that she is a licensed cosmetologist, and that at the time of her alleged injury, she worked as a beautician in her own shop as much as 40 hours per week, in addition to her job with the respondent employer. It is common knowledge that the field of cosmetology not only requires the extensive use of one's hands, but it requires being able to stand and move about for prolonged periods of time, which entails the extensive use of one's feet. This was confirmed by the claimant's testimony that her job as a beautician requires continuous standing. Therefore, it defies logic that, had the claimant sustained an injury to her foot or ankle at the time of her alleged accident, she would not have been just as concerned about the affects of such an injury on her livelihood as she would about an injury affecting the use of her hands. Further, the claimant admitted that she had been involved in a car accident a year prior to her alleged work injury in which she had sustained injury to her right foot and ankle.

The claimant testified that sometime after her alleged work injury, a small bump appeared on her right foot that "kept getting bigger and getting bigger". The claimant stated that she sought medical treatment for this condition after the cyst became large enough to cause pain. The claimant testified that she still has problems with "fullness and puffiness" in the area from which her ganglion cyst was surgically removed, and she expressed concern that the cyst may come back, as did her previous left foot ganglion cyst.

Finally, Dr. Mitchell reasoned in his letter of June 28, 2005, that because the claimant did not have the right foot ganglion cyst prior to her alleged injury, he had no reason to suspect that it was otherwise caused. However, in his letter, Dr. Spurgin stated that his physical examination of the claimant on February 2, 2005, revealed no signs of injury to her feet or ankles, in that he observed normal reflexes, no swelling or discoloration, and no pain associated with her deep tendon reflexes. In addition, Dr. Spurgin stated that the claimant had made no allegations of injury to her right foot or ankle at the time of her

initial examination. To conclude that the claimant's ganglion cyst was caused by her alleged accident based solely upon the fact that it appeared after the incident in question, is basing a conclusion on speculation and conjecture. It is well established that conjecture and speculation, even if plausible, cannot take the place of proof. Ark. Dept. of Correction v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991). Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979). Arkansas Methodist Hospital v. Adams, 43 Ark. App. 1, 858 S.W.2d 125 (1993). Moreover, The Commission has the authority to resolve conflicting evidence and this extends to medical testimony. Foxx v. American Transp., 54 Ark. App. 115, 924 S.W.2d 814 (1996). The Commission is entitled to review the basis for a doctor's opinion in deciding the weight of the opinion. Reeder v. Rheem Mfg. Co., 38 Ark. App. 248, 832 S.W.2d 505 (1992). Finally, there is no requirement that medical testimony be expressly or solely based on objective findings, only that the record contain supporting objective findings. Swift-Eckrich, Inc. v. Brock, 63 Ark. App. 118, 975 S.W.2d 857 (1998).

In this case, Dr. Mitchell appears to have based his medical opinion concerning causation on the assumption that the claimant sustained a capsular tear at the time of her alleged accident. However, Dr. Spurgin's contemporaneous examination of the claimant revealed no injury to her feet or ankles. Therefore, pursuant to our workers' compensation laws, Dr. Mitchell's medical opinion is far too speculative on which to base an award of compensability, and should be given minimal weight in our determination. Based, however, upon the claimant's medial history, which shows a propensity for her to develop ganglion cysts in her feet; considering that a car accident a year prior to her alleged work related injury resulted in an injury to her right foot and ankle; taking into account that she did not report or complain of a right foot injury at the time of her alleged accident; and, considering that her cyst developed well after this alleged event, the credible evidence preponderates against the claimant's right foot cyst being causally related to her alleged accident. Moreover, the record is devoid of objective medical evidence to substantiate that the claimant

sustained an injury to her right foot at the time of her alleged accident. Instead, the objective medical evidence demonstrates that the claimant presented no signs or symptoms of such an injury at the time of her initial medical treatment.

Based upon the above and foregoing, I find that the claimant has failed to prove by a preponderance of the evidence, particularly objective medical evidence, that she sustained an injury to her right foot and ankle which caused her to develop a ganglion cyst. Likewise, this same medical evidence fails to establish that the claimant sustained other physical injuries as a result of her alleged fall on January 26, 2005. Therefore, for those reasons set forth above, I find that the decision of the Administrative Law Judge should be reversed, in part, and affirmed, in part. Accordingly, I respectfully concur, in part with, and dissent, in part from, the majority's opinion.

---

KAREN H. MCKINNEY, Commissioner