

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F501700

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| LINDA PARSON, EMPLOYEE  | CLAIMANT   |
| ARK. METHODIST HOSPITAL, EMPLOYER   | RESPONDENT |
| ARK. PROPERTY & CASUALTY<br>GUARANTY FUND, ON BEHALF OF RECIPROCAL<br>OF AMERICA, CARRIER | RESPONDENT |

**OPINION FILED AUGUST 16, 2006**

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

Claimant represented by HONORABLE M. SCOTT WILLHITE,  
Attorney at Law, Jonesboro, Arkansas.

Respondent represented by HONORABLE MARK A. PEOPLES,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal a decision by the Administrative Law Judge finding that the claimant proved by a preponderance of the evidence that she sustained a compensable injury to her brain as well as wage loss disability benefits in the amount of 15% over and above her permanent anatomical impairment. Based upon our de novo review of the record, we find that the claimant has failed to meet her burden of proof. Accordingly, we reverse the decision of the Administrative Law Judge.

The claimant was employed by the respondent employer as an LPN. On October 29, 2001, the claimant fell and hit her head at work. The claimant was taken to the emergency room, treated and released. She suffered a black eye and some bruising on her face. The injury was accepted as compensable and the respondents provided medical treatment.

The claimant returned to regular duty and left the employ of the respondent employer in April of 2006 due to reasons that were unrelated to her compensable injury. The claimant is seeking treatment and impairment based upon her continued headaches and her cognitive decline in memory loss.

We find that the claimant has received all the medical treatment for which she is entitled. The Administrative Law Judge found that the claimant sustained a compensable injury to her brain and did not use the requirements of Ark. Code Ann. §11-9-113. In our opinion, §11-9-113 is applicable to this case. For injuries deemed to be mental injuries, Ark. Code Ann. § 11-9-102(4)(C) (Repl. 2002) states, "[t]he definition of 'compensable injury' as

set forth herein shall not be deemed to limit or abrogate the right to recover from mental injuries as set forth in § 11-9-113 ...” Ark. Code Ann. § 11-9-113 provides:

(a) (1) A mental injury or illness is not a compensable injury unless it is caused by a physical injury to the employee's body, and shall not be considered an injury arising out of and in the course of employment or compensable unless it is demonstrated by a preponderance of the evidence;

(a) (2) No mental injury or illness under this section shall be compensable unless it is diagnosed by a licensed psychiatrist or psychologist and unless a diagnosis of the condition meets the criteria established in the most current issue of the diagnostic and statistical manual of mental disorders.

In the case of Dugan v. Jerry Sweetser, Inc., 54 Ark. App. 401, 928 S.W.2d 341 (1996) the Court found that there must be a compensable physical injury in order for the claimant to recover for a psychological injury, before the claimant would be entitled to 26 weeks of benefits. However, our review of the evidence indicates that the claimant is not entitled to any impairment based upon her perceived cognitive problems.

After reviewing the medical evidence, it is clear

that the doctor failed to use the proper criteria to establish the claimant's mental injury. The claimant's treating physician is required to use the Diagnostic and Statistical Manual of Mental Disorders. However, the claimant's treating physician did not use that publication, but instead used the Guides. There is no reference whatsoever in Dr. Johnson's reports to the DSM as required by Ark. Code Ann. §11-9-113(2).

Dr. Spanos also addressed that there could be objective signs of a closed head injury but only identified the EEG as the way to determine that. The claimant underwent an EEG and he did not see any abnormalities. He admitted that the test on which he based his conclusions, tests that he accepted as objective, were convoluted. He also admitted that in order to reach his conclusions he had to take the patient at face value. In other words, Dr. Spanos was required to rely on the claimant's own subjective assessment of her condition so that he could get his impressions subjectively. He based his conclusions on whether the claimant was complaining. This is obviously a factor within the claimant's voluntary control. When assessing permanent

impairment, it must be based on objective findings. Objective findings are defined at Ark. Code Ann. § 11-9-102(16) as those findings which cannot come under the voluntary control of the patient. Therefore, we reject Dr. Spanos's assessment of anatomical impairment because it is not based upon objective findings. The Commission has a duty to translate the evidence on all the issues before it into findings of fact. The Commission need not base a decision on how the medical profession may characterize a given condition, but rather primarily on factors germane to the purposes of the Workers' Compensation Law. Weldon v. Pierce Brothers Construction Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996). The Commission is never limited to medical evidence in arriving at its decision. Further, The Commission is not bound by a doctor's opinion which is based largely on facts related to him by claimant where there is no sufficient independent knowledge upon which to corroborate claimant's claim. Roberts v. Leo Levi Hospital, 8 Ark. App. 184, 649 S.W.2d 402 (1983). The Commission has the duty of weighing the medical evidence as it does any other evidence, and the resolution of any conflicting

medical evidence is a question of fact for the Commission to resolve. CDI Contractors v. McHale, 41 Ark. App. 57, 848 S.W.2d 941 (1993). It is well established that the determination of the credibility and weight to be given a witness's testimony is within the sole province of the Workers' Compensation Commission; the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. Wal-Mart Stores, Inc. v. Sands, 80 Ark. App. 51, 91 S.W.3d 93 (2002). The Commission has the duty of weighing the medical evidence as it does any other evidence, and its resolution of the medical evidence has the force and effect of a jury verdict. Id. Accordingly, we find that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable mental injury.

The claimant has also asked for wage loss disability benefits in excess of her permanent anatomical impairment. However, the claimant must first prove that she sustained permanent anatomical impairment as a result of her injury. In our opinion, the claimant cannot prove that she

sustained any permanent anatomical impairment. Therefore, she is not entitled any wage loss disability benefits. Even if the claimant could prove that she had some permanent anatomical impairment, a finding we do not make, the claimant cannot prove that the compensable injury was the major cause of her impairment.

Ark. Code Ann. §11-9-102(4)(F)(ii)(a) provides, "Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment." "Major cause" means "more than fifty percent (50%) of the cause," and a finding of major cause "shall be established according to the preponderance of the evidence." Ark. Code Ann. §11-9-102(14). The Commission has the right to review the basis for a doctor's opinion in deciding the weight to afford such opinion. Reeder v. Rheem Mfg.Co. 38 Ark. App. 248, 832 S.W.2d 505 (1992). Medical opinions based solely upon claimant's history and her own subjective belief that a medical condition is related to her injury is not a substitute for credible evidence. Brewer v. Paragould Housing Authority, Full Commission Opinion filed Jan. 22,

1996, (Claim No. E417617).

Dr. Johnson opined that it would be typical for a "majority" of patients who had experienced a fall and symptoms similar to the claimant's to "return to baseline functioning typically within a few months." But with the claimant, Dr. Johnson attributed her more severe symptoms and slower recovery to a "clinically significant level of depressive/dysthymic and to a lesser extent anxious symptoms prior to her fall. Such symptoms were, however, "exacerbated significantly," but not by her physical injury. Instead the exacerbation resulted from "her general medical condition, loss of work, etc., that has occurred since the fall." The claimant has also suffered from severe headaches for several years pre-dating her fall.

It would require conjecture and speculation to conclude that the claimant's decline in mental function resulted from her fall. 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). Even deeper speculation would be required to conclude that the fall was the major cause of her disability and/or need for treatment. Dr. Johnson's conjecture that "the emotional/behavioral component of post concussive syndrome is likely complicating recovery" is the closest evidence to a causal connection, and that significantly less than major cause.

Furthermore, Dr. Spanos's testimony appears to be inconsistent with his 10/14/03 opinion:

Ms. Linda Parson (sic) was initially evaluated by me in February of 2002 with her most recent visit in December of 2002. Since that time the patient has done very well and has had no further headaches. She is currently taking medication and has reached her maximum medical benefit. Her headaches appear to be resolved and she will continue this medication indefinitely.

It is the Commission's duty to weigh medical evidence and, if the evidence is conflicting, its resolution is a question of fact for the Commission. Green Bay Packaging v. Bartlett, 67 Ark. App. 332, 999 S.W.2d 695 (1999).

Therefore, after considering the evidence and conducting a de novo review of the record, we find that the

claimant has failed to meet her burden of proof.  
Accordingly, we reverse the decision of the Administrative  
Law Judge.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.