

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F302409

JANE C. REIS,
EMPLOYEE

CLAIMANT

WAL-MART ASSOCIATES, INC.,
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED MARCH 23, 2006

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

Claimant represented by the HONORABLE PHILIP M. WILSON,
Attorney at Law, Little Rock, Arkansas.

Respondent represented by the HONORABLE CURTIS L. NEBBEN,
Attorney at Law, Fayetteville, Arkansas.

Decision of the administrative law judge: Affirmed in part
and reversed in part.

OPINION AND ORDER

The respondent appeals from an administrative law
judge's opinion filed October 11, 2005. The administrative
law judge found in pertinent part, "Claimant sustained her
burden of proving that she is entitled to additional
reasonably necessary medical treatment in connection with
her compensable low back injury. Claimant sustained her

burden of proving that she suffered a compensable injury to her cervical spine on December 30, 2002. Claimant sustained her burden of proving that she is entitled to reasonably necessary medical treatment in connection with her compensable cervical spine injury. Claimant sustained her burden of proving that she is entitled to an 8% permanent impairment rating as a result of her cervical spine injury."

After reviewing the entire record *de novo*, the Full Commission affirms in part, and reverses in part the opinion of the administrative law judge. The Full Commission affirms the administrative law judge's award of additional medical treatment for her compensable low back injury/lumbar strain injury. However, we reverse the administrative law judge's finding that the claimant proved by a preponderance of the evidence that she suffered a compensable injury to her cervical spine on December 30, 2002. As a result, we further find that the administrative law judge's award of benefits and compensation for this injury must be reversed.

I. History

The claimant, age 48 (3/27/57), worked for the respondent approximately four years. The claimant worked for the respondent performing job duties as a department manager for household chemicals and paper goods. On December 30, 2002, the claimant sustained an admittedly compensable injury to her low back in the form of a lumbar strain while working for the respondent as she moved and lifted cases of Tide detergent. The respondent accepted the claim as compensable with respect to the injury relating to the claimant's lower back. Subsequently, the respondent controverted additional medical treatment for the claimant's low back injury and the compensability of her alleged cervical spine injury. As a result, the claimant has brought this claim asserting her rights to additional benefits and compensation.

On December 31, 2002, the claimant presented to Dr. Barry Carroll for treatment of her work-related injury. The claimant reported that she had injured her lower back the prior day as she pulled out and lifted a case of Tide. The claimant reported numbness, which radiated down into her right leg. According to the claimant, this was along the

lateral aspect of her leg and it stopped above the knee. Dr. Carroll assessed the claimant as having "lower back strain," for which he ordered physical therapy treatment. He also prescribed medication for the claimant and restricted her to modified work activity.

The claimant was seen at the Ozark Health Medical Center on January 13, 2003, for therapeutic exercise for lumbar stabilization. At that time, the claimant had no reported complaints of cervical spine pain or related symptoms.

On January 14, 2003, the claimant was seen for a follow-up visit of her work-related injury with Dr. Carroll. The claimant reported that her back pain had increased as a result of a long car ride. However, Dr. Carroll reported, "Her x-rays were read as normal by the radiologist. She has been receiving physical therapy. She reports that this has been helping her. She feels like the medicines have also been helping her symptoms." Dr. Carroll assessed the claimant as having a backache with paresthesias in both legs. As a result, he continued the claimant's medications and physical therapy treatment.

The claimant underwent evaluation with Dr. Harry Starnes on January 15, 2003. At that time, the claimant reported having had a knot in the back of her neck for the past year. Dr. Starnes assessed the claimant as having neck pain, for which he ordered an MRI of the cervical spine.

An MRI was taken of the cervical spine on January 22, 2003, with the following findings:

... Disk degeneration is evident at multiple levels. Minimal canal narrowing is present at C3-4 and C4-5 due to minimal disk/osteophyte complexes. At C6-7, there is mild canal narrowing due to disk/osteophyte complex. A 5mm low signal mass was identified within the inferior left C6-7 foramen, which may represent extruded disk, or prominent osteophyte. This results in narrowing of that neural foramen. No other levels of neural foraminal narrowing are seen.

The claimant was seen for a follow-up visit with Dr. Starnes on January 28, 2003, for review of her MRI report. She had continued complaints of neck pain. Dr. Starnes assessed the claimant as having neck pain and referred her to Dr. Ronald Williams.

On February 3, 2003, the claimant returned to see Dr. Carroll for follow-up care of her back pain. The claimant reported that her pain was about the same and that physical

therapy had not made any significant change in her pain. However, Dr. Carroll noted that the MRI of the back showed no stenosis or nerve root impingement according to the report from the radiologist. As a result, Dr. Carroll felt that a neurological referral would be the next appropriate step.

The claimant underwent an evaluation with Dr. Williams on February 13, 2003. Pursuant to this evaluation Dr. Williams reported the following to Dr. Harry Starnes:

... For about two months now she has had difficulty with neck pain that goes into both shoulders, worse on the right than the left, but not on down into the arm. She brings along a MRI of the cervical spine that shows a bone spur or ruptured disc on the left at C6-7.

On examining her today, she is alert. Range of motion in the neck is full. There is no sensory deficit. Deep tendon reflexes are normal and equal bilaterally. Plantar response is flexor bilaterally. There is weakness in the left triceps and the external rotators of the left shoulder.

Harry, I have arranged for her to have an outpatient cervical myelogram and EMG and nerve conduction studies of the left arm at St. Vincent Infirmary on 2/26/03. She also complains of bilateral numbness in her legs, worse on the right than the left, so I am going to get EMG and nerve conduction studies of the right leg as well. I will let you know what we find.

On February 24, 2003, the claimant underwent follow-up care with Dr. Carroll. The claimant had continued complaints of back and leg pain along with reported complaints of some pain of the neck. Dr. Carroll reported, in pertinent part, "MRI at this point on 1/28/03 by radiologist exhibits no evidence for significant disc bulge or central canal stenosis or _____ stenosis." As a result, Dr. Carroll felt that the next step would be for the claimant to see a neurologist for possible EMG nerve conduction velocities or other testing.

A CT scan of the cervical spine was performed on February 26, 2003, with the following impression:

Multi-level degenerative disc disease. The findings are most pronounced at the C6-7 level. **At this point there is a combination of diffuse bulge and spur with marked Luschka joint hypertrophy on the left.** There is marked narrowing of the left C7 neural foramen.

The claimant also underwent nerve conduction studies of her left upper and right lower extremities on February 26, 2003, which were normal.

On February 27, 2003, the claimant returned for a follow-up visit with Dr. Williams. He noted that the claimant had reported to him that the exact date of her neck

pain started December 30, 2002, at which time she also injured her back. Dr. Williams reported that the claimant's EMG and nerve conduction studies of the left arm and right leg were normal. He further reported that the myelogram/post-myelogram CT had shown marked foraminal stenosis at C6-7 secondary to a bone spur and disc fragment, for which she had been tentatively scheduled to have an anterior cervical fusion performed on March 13, 2003.

The claimant underwent initial evaluation with Dr. Wayne Bruffett on March 10, 2003, due to complaints of back, shoulder and neck pain. His impression was "disk desiccation and lumbar strain and herniated disk of the cervical spine." Dr. Bruffett recommended that the claimant's low back pain be treated non-surgically with a good trunk-stabilization-exercise program. The claimant requested a second opinion regarding her cervical surgery, but Dr. Bruffett was of the opinion that she was in good hands with Dr. Williams.

In a letter dated May 9, 2003, Dr. Williams wrote:

Ms. Reis indicated to me when she was in my office on February 27, 2003 that she began having back and neck difficulties when she injured her neck on December 30,

2002. If that is the case, then the incident should be considered the cause of her medical care.

On May 14, 2003, the claimant sought a second opinion from Dr. Harold Chakales regarding the recommendation for cervical surgery. Dr. Chakales diagnosed the claimant as having "cervical disc syndrome, C6-7, with central and unilateral findings, and a history of lumbar spine strain." He advised the claimant that surgery was definitely indicated. However, as an alternative to surgery, Dr. Chakales recommended cervical epidural injections and if this had a satisfactory result, then surgery would not be indicated.

Dr. Bruffett reported in a letter dated June 17, 2003, that he did not know whether the claimant had reached maximum medical improvement because that would be based on how she was responding to her treatment with Dr. Safman. Dr. Williams went on to state that he was of the opinion that the claimant would reach this point when she plateaus in her recovery. He was also of the opinion that the claimant had probably aggravated her preexisting degenerative condition. Dr. Williams wrote:

I do not know that there are any "objective

measurable findings" that "substantiate extended healing on the soft tissue strain." I think sometimes some people just take longer to heal.

In a letter dated June 4, 2004, Dr. Williams stated with a reasonable degree of medical certainty that as a result of her anterior cervical fusion, the claimant had suffered a 9% permanent impairment rating.

A hearing was held in this matter on July 13, 2005. During the hearing, the claimant gave testimony. The claimant admitted that she sustained a compensable injury on December 30, 2002. The claimant also admitted to completing an accident or incident report of her injury about an hour after the incident. According to the claimant, she reported on the Form AR-N that she had injured only her back. However, the claimant maintains that her neck was hurt at that time but it was not as painful as her back. The claimant testified that she has treated with Drs. Carroll, Starnes, Williams, Bruffett, and Chakales. The claimant denied having had any surgery on her back, but she admitted to having had surgery on her neck, which was performed by Dr. Williams. The claimant testified that in the 80's while working for a public service company she suffered a lumbar

strain, but she did not have surgery as a result of this injury. The claimant denied having experienced any problems with her neck prior to December (2002). The claimant testified that although she returned to work after her accident, she continued to complain of neck and back pain to her supervisors.

The claimant essentially testified that although medical records may show that she did not complain of neck pain until January 22, 2003, her neck was hurting when she talked to the physical therapist and it took about a week or so to get an appointment to see Dr. Starnes.

According to the claimant, the respondent initially paid for the treatment pertaining to her back, but she later learned from Dr. Carroll's office that it had stopped paying. The claimant testified that she is still having symptoms from her low back injury. According to the claimant, as of her last visit with Dr. Carroll when the respondent was still paying, he was giving her anti-inflammatory medication and muscle relaxers, and wanted to do some blood tests. The claimant testified that once she found out the respondent was not going to pay, she asked Dr.

Carroll to hold off on the blood tests until she could get things straightened out because she did not want to be responsible for the bill. The claimant testified that she returned to work for the respondent after her surgery as a department head.

On cross-examination, the claimant admitted to having surgery on her neck in December of 2003. The claimant testified that she continued to work for Wal-Mart up until approximately December of 2003. According to the claimant, she was off work approximately seven weeks due to her surgery. Although the claimant denied any prior problems with her neck, she admitted to having a lump on the side of her neck. According to the claimant, the lump had been on the side of her neck about year before this incident of December 30, 2002. The claimant testified that she and her husband own a house and 137 acres in the Clinton area. The claimant admitted that at the time of her deposition, they had about five horses and a couple dozen chickens. As of the date of the hearing, the claimant had same number of horses, but fewer chickens. The claimant testified that at the time of her deposition, she occasionally took care of

feeding and watering the horses and chickens on the weekends. The claimant admitted to haying the horses twice a day during the winter months, but not as much during the spring.

On cross-examination, the claimant essentially testified that when she got hurt, she thought she had hurt her back really "bad," but she did not think that her neck injury was severe.

Upon being questioned by the Commission, the claimant admitted that the surgery helped to strengthen her left arm and the intensity of her pain has since been decreased. The claimant testified that she continues to have problems with her back, as she has recently been in a lot of pain. According to the claimant, she has to take pills for her back in order to be able to work.

A prehearing telephone conference was held in this claim on May 17, 2005. As a result, a Prehearing Order was entered in the claim on that same date. The following stipulations were submitted by the parties and accepted by the administrative law judge:

- 1). The employee-employer relationship existed on December 30, 2002.

2). Claimant sustained a compensable low back injury on December 30, 2002.

3). Respondent controverts additional benefits related to claimant's low back injury from March 1, 2004.

4). Respondent controverts claimant's cervical injury claim in its entirety.

The parties agreed that the issues to be litigated at the hearing were limited to the following:

1). Whether the claimant sustained a compensable injury to her cervical spine.

2). Whether claimant is entitled to medical treatment for her compensable injury for her cervical spine.

3). Whether claimant is entitled to additional medical treatment for her low back.

4). Whether claimant is entitled to a 9% permanent impairment rating as a result of her cervical spine injury.

In this regard, the claimant contended that when she sustained her compensable low back injury on December 30, 2002, she also sustained a compensable injury to her cervical spine. She seeks medical treatment for this injury, as well as additional medical treatment for her low back. Dr. Ronald Williams assigned claimant a 9% permanent impairment rating following surgery upon her cervical spine;

she seeks a determination that she is entitled to that rating.

The respondent contended that the claimant's neck condition is a preexisting condition; it also notes that claimant did not report a cervical spine injury. With regard to additional medical treatment for claimant's low back, respondent contended that the additional treatment is unreasonable and unnecessary.

After a hearing before the Commission, the administrative law judge found, "Claimant sustained her burden of proving that she is entitled to additional reasonably necessary medical treatment in connection with her compensable low back injury. Claimant sustained her burden of proving that she suffered a compensable injury to her cervical spine on December 30, 2002. Claimant sustained her burden of proving that she is entitled to reasonably necessary medical treatment in connection with her compensable cervical spine injury. Claimant sustained her burden of proving that she is entitled to an 8% permanent impairment rating as a result of her cervical spine injury."

The respondent appeals to the Full Commission.

II. Adjudication

A. Medical treatment

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508 (a). The claimant must prove by a preponderance of the evidence that she is entitled to additional medical treatment. Wal-Mart Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W.3d 153 (2003). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

In the present matter, the Full Commission affirms the administrative law judge's finding wherein he found that the claimant sustained her burden of proving that she is entitled to additional reasonably necessary medical treatment in connection with her compensable low back injury. The parties stipulated that the claimant sustained a compensable low back injury on December 30, 2002, for which respondent paid medical benefits until March 1, 2004. In the present matter, the Full Commission finds that the

administrative law judge correctly noted that the medical records corroborate the claimant's continuing low back complaints, which have been present since her compensable injury, thereby establishing her need for additional medical treatment in connection with her compensable lumbar strain injury.

B. Compensability of Cervical Spine Injury

The claimant now contends that in addition to her admittedly compensable low back injury, she sustained a compensable injury to her cervical spine during her December 30, 2002 incident. Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2002) defines "compensable injury" as "[a]n accidental injury causing internal or external physical harm to the body . . . 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." Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002). The phrase "arising out of the employment refers to the origin or cause of the accident," so the employee was required to show that a

causal connection existed between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). An injury occurs "'in the course of employment' when it occurs within the time and space boundaries of the employment, while the employee is carrying out the employer's purpose, or advancing the employer's interest directly or indirectly." City of El Dorado v. Sartor, 21 Ark. App. 143, 729 S.W.2d 430 (1987). Under the statute, for an accidental injury to be compensable, the claimant must show that she sustained an accidental injury; that it caused internal or external physical injury to the body; that the injury arose out of and in the course of employment; and that the injury required medical services or resulted in disability or death. Id. Additionally, the claimant must establish a compensable injury by medical evidence, supported by objective findings as defined in §11-9-102(16). Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000). The injured party bears the burden of proof in establishing entitlement to benefits under the Workers'

Compensation Act and must sustain that burden by a preponderance of the evidence. See Ark. Code Ann. § 11-9-102(4)(E)(i) (Repl. 2002); Clardy v. Medi-Homes LTC Servs., 75 Ark. App. 156, 55 S.W.3d 791 (2001).

The administrative law judge found in the present matter that "Claimant sustained her burden of proving that she suffered a compensable injury to her cervical spine on December 30, 2002." The Full Commission reverses this finding. We find that the claimant failed to prove that she sustained a compensable injury to her cervical spine on December 30, 2002, while working for the respondent.

Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. White v. Gregg Agricultural Ent., 72 Ark. App 309, 37 S.W.3d 649 (2001). When there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. Id. 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 that it deems

worthy of belief. Id. With respect to the claimant's testimony considering her alleged injury to her cervical spine, we find that the claimant was not a credible witness. The claimant testified that she injured her neck and back during the December 30, 2002 incident. However, when the claimant reported her injury on the Form N, she made absolutely no mention of any injury to her cervical area, as she reported having injured only her back. Furthermore, there is no medically documented complaint by the claimant of any cervical problems until January 15, 2003. In addition, although the claimant denies any prior problems with her neck, the Full Commission finds that the preponderance of the credible evidence demonstrates that the instant claimant has a history of prior problems with her neck preceding her December 30, 2002 injury, which includes a knot/lump on the side of her neck that had been there for at least a year prior to her incident, and diagnostic testings reveal that she suffered from preexisting multi-level degenerative disc disease. Hence, in comparing the claimant's testimony to the preponderance of the evidence, we find that the claimant was not a credible witness with

respect to her testimony concerning her alleged cervical injury. The Full Commission recognizes that Dr. Williams has opined that the claimant's cervical problems are related to her December 30, 2002 injury. However, the Commission is entitled to review the basis for a doctor's opinion in deciding the weight and credibility of the opinion and medical evidence. Maverick Transp. v. Buzzard, 69 Ark. App. 128, 10 S.W.3d 467 (2000). In the present matter, we do not place any weight on Dr. Williams's opinion because it is based on an inaccurate history provided to him by the claimant and cannot be relied upon for making a compensability determination.

Therefore, considering that the initial medicals and the Form N do not corroborate the claimant's testimony concerning her alleged injury to her cervical spine, the claimant had preexisting neck conditions, and because she did not make a medically documented report of problems with her cervical spine until January 15, 2003, the Full Commission finds that the claimant failed to establish a causal connection between her accidental work injury on December 30, 2002, and her current cervical problems. As a

result, the Full Commission finds that the claimant failed to prove by a preponderance of the evidence that she sustained a compensable injury to her cervical spine which arose out of and in the course of her employment with the respondent. Therefore, we hereby reverse the administrative law judge's finding that the claimant suffered a compensable injury to her cervical spine on December 30, 2002.

Accordingly, having found that the claimant did not meet her burden of proof that she sustained a compensable injury to her cervical spine, we further find that she is not entitled to any medical benefits or a permanent impairment rating, which may have resulted due to this injury. As such, the Full Commission also reverses the administrative law judge's findings pertaining to these issues.

Based on our *de novo* review of the entire record, the Full Commission affirms in part and reverses in part, the opinion of the administrative law judge. The Full Commission affirms the administrative law judge's finding that the claimant has proven by a preponderance of the evidence her entitlement to additional medical treatment for her compensable lumbar strain injury. However, we find that the

claimant failed to prove that she sustained a compensable injury to her cervical spine on December 30, 2002, which arose out of and in the course of her employment with the respondent. Because we find that the claimant failed to prove she suffered a compensable injury to her cervical spine, we find that the administrative law judge's award of medical benefits and the 8% permanent impairment rating must be reversed. As a result, her claim for this injury is denied and dismissed in its entirety.

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. 1996).

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 in part 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

KAREN H. MCKINNEY, Commissioner

Commissioner Turner concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

I concur with the majority's finding that the claimant sustained a compensable lumbar injury and that he is entitled to associated benefits. However, I will respectfully dissent without opinion with regard to the majority's finding that the claimant did not sustain a compensable cervical injury.

SHELBY W. TURNER, Commissioner