

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F300066

MARY C. RODRIGUEZ, EMPLOYEE	CLAIMANT
LAKWOOD PLAZA NURSING CENTER A SELF INSURED EMPLOYER	RESPONDENT

OPINION FILED NOVEMBER 3, 2006

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

Claimant represented by HONORABLE JAMES STANLEY, Attorney at Law, North Little Rock, Arkansas.

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

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed July 10, 2006.

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

1. There was an employer-employee relationship on August 8, 2002.
2. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury arising out of and in the course of her employment and supported by objective findings.

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 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.

DISSENTING OPINION

I must respectfully dissent from the Majority opinion finding that the claimant did not sustain a compensable injury shown by objective findings. On July 10, 2006, an Administrative Law Judge issued a decision finding that the claimant failed to prove she sustained a compensable injury. The Administrative Law Judge further found the reason the claimant failed to show a compensable injury was because she failed to show objective findings of any work-related injury. The Administrative Law Judge further opined that she would not be addressing the issues of statute of limitations, temporary total disability rate,

and entitlement to temporary total disability benefits. The Majority now affirms and adopts that decision as their own.

On appeal the claimant contends that she has shown objective medical findings directly related to her work-related injury. She further contends that she is entitled to medical benefits and temporary total disability benefits. Neither party raises the issue of statute of limitations. After a de novo review of the record, I find that the claimant has shown that she has objective findings of an injury. I further find the claimant's request for additional benefits is not barred by the statute of limitations and that she is entitled to temporary total disability benefits.

The claimant worked as a licensed LPN for the respondent. She began her employment in 2002. The claimant testified that she worked as the night charge nurse. She said that she was the only nurse on duty at nights and that there were approximately 90 nurses on a given night. As part of her responsibilities, the claimant was responsible for supervising nine to ten CNAs and caring for patients.

She was also the only person that would be able to read charts or to, "take off all the doctors' orders,". She further indicated that she often worked double shifts that were 16 hours long and that she would not get breaks.

Prior to working for the respondents, the claimant had never been treated for any gynecological abnormality. The claimant testified that on August 8, 2002, she was assisting a CNA with lifting a 300-pound patient into a wheelchair. The claimant said that as they were lifting the patient, she felt pain in her pelvic and lower abdominal regions. She said that she had never felt similar pain before. She relayed that she could not lift the patient and that eventually four people had to lift the patient into the wheelchair.

The claimant indicated that the lifting incident occurred near the end of her shift. Around one hour or so after the incident, after she was finished working, she noticed vaginal bleeding. The claimant had never suffered vaginal bleeding except for when she was menstruating. Accordingly, she immediately contacted the Health Department

and scheduled an appointment at the women's clinic.

At that point, the claimant was treated by a nurse practitioner at the health clinic. The claimant testified that she was diagnosed with a prolapsed uterus and was referred to a gynecologist. She was also instructed not to lift, push, pull, or carry any item in excess of 25 pounds. A doctor's note from Cynthia Burns, APN, dated August 8, 2002, indicates that the claimant was not to lift more than 25 pounds until further notice.

The claimant reported to work the next day and told an RN of her injury. The respondents then arranged for the claimant to see one of their physicians. The claimant says that physician did not do a gynecological exam, but instead sent her to Dr. McKnight, who was a gynecologist. A doctor's note dated September 4, 2002, indicates that the claimant was seen by Dr. McKnight. It indicates that she was restricted from lifting, pulling, or pushing in excess of 25 pounds. The claimant testified that Dr. McKnight also diagnosed her with a prolapsed uterus. He also recommended the claimant undergo surgery.

A letter dated September 3, 2002, from the respondents' nurse case manager to Dr. McKnight is also included in the record. It indicates that the claimant suffered abdominal pelvic and cervical pain on August 8, 2002, after helping a patient into a wheelchair. The note further provides, "Ms. Rodriguez sought medical treatment from the Faulkner County Health Unit on the same day and was documented to have a 2nd degree uterine prolapse and vaginal bleeding." The note further indicates that the claimant's records from that date were being enclosed. It goes on to ask various questions regarding the claimant and her condition.

On the letter, there are handwritten responses. While no one signed the report, it appears that since the letter was addressed to Dr. McKnight, he was the person responsible for the responses. The first question provides, "What is Ms. Rodriguez's 8/8/02 injury diagnosis. The response indicates, "cystocele + and rectocele." In response to the question, "What are your treatment recommendations for Ms. Rodriguez's conditions which would

be considered reasonably related to her work injury?", the answer, "A + P repair", is given. In response to the question, "Is Ms. Rodriguez's reported work injury of 8/8/02 considered to be the major cause of this condition and need for treatment?", Dr. McKnight answered, "Pt contributes". Finally, he indicated the claimant would be on 25-pound weight restrictions, even after having surgery.

The claimant testified that her medical treatment and surgery were pre-approved and paid for by the respondents. The claimant said at that point she returned to work for light-duty work. She relayed that when she provided the respondents with a note indicating that she was restricted from lifting more than 25 pounds, she was immediately discharged from her employment. The claimant estimated that from the time of her injury to the time of her discharge, approximately one week lapsed.

A doctor's note dated October 7, 2002, from Dr. McKnight, indicates that the claimant is scheduled for surgery on November 4, 2002. It further provides that she would be unable to work for six weeks after the surgery. The

claimant testified that after the respondents discharged her, she attempted to find work, but no one would hire her because of her restrictions and because she had an upcoming surgery scheduled for November 4.

On November 4, 2002, the claimant underwent a procedure to correct her prolapsed uterus. The claimant said that she had recovered within approximately six weeks, but that she remained on lifting restrictions of 20 to 25 pounds. She indicated she was released from Dr. McKnight's care on January 3, 2003, but that she still had restrictions. She further indicated that she has worked for a couple of temporary agencies, but that due to her restrictions, no one would hire her.

The claimant said that her surgery and all expenses were all paid for by the respondents. Medical records indicate that the respondents paid various medical expenses for the claimant until January 13, 2003, which is consistent with the claimant's testimony.

The Majority, by affirming and adopting the decision of the Administrative Law Judge, denies the

claimant benefits on the basis that she had not shown objective findings of a compensable injury. Specifically, they opine the claimant should be denied benefits because she failed to introduce contemporaneous medical records showing an injury. In my opinion, this finding is erroneous and fails to consider the various medical reports indicating the claimant suffered a prolapsed uterus on August 8, 2002. In fact, the evidence is clear that the respondents accepted liability for the claim until the claimant decided that she wanted to pursue benefits in excess of medical benefits. Accordingly, I find that the claimant sustained a compensable injury and that the decision of the Administrative Law Judge should have been reversed.

In order to prove a compensable injury, a claimant must prove, among other things, a causal relationship between his 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 Mgmt. v. McDonald, 80 Ark. App. 45, 89 S.W.3d 375 (2002). 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. When the Commission determines physical or anatomical impairment, complaints of pain, straight-leg raising tests, or active range of motion tests shall not be considered objective findings. Further, medical opinions addressing compensability and permanent impairment must be stated within a reasonable degree of medical certainty. Objective medical evidence is not essential to establish the causal relationship between the injury and a work-related accident where objective medical evidence establishes the extent and existence of the injury, and a preponderance of other non-medical evidence establishes a causal relation to a work-related incident. McDonald.

In the present case, the evidence is clear that the claimant sustained a prolapsed uterus on August 8, 2002, as a direct result of her attempting to lift a patient at work. The claimant credibly testified that she was lifting

a patient and that she felt pain in her pelvic and lower abdominal region. Shortly thereafter, she noticed vaginal bleeding, reported the injury, and received medical care at the expense of the respondents. The claimant testified that she had never had gynecological problems prior to this incident and that her injury was a direct result of her lifting the patient at work. This testimony is unrefuted and appears to be corroborated by the medical records in evidence.

The Majority essentially contends that the claimant has not introduced medical documentation showing objective findings of an injury. I find that the September 3, 2002, letter from the respondents' case manager, in conjunction with the other medical documentation, satisfies the requirement for contemporaneous medical records showing a compensable injury. In the letter dated September 3, 2002, the respondents' own case manager specifically acknowledges that the claimant's August 8, 2002, medical report documented vaginal bleeding and a prolapsed uterus. The note provides,

Ms Rodriguez, while employed by the Lakewood Plaza Nursing Center, reportedly experienced abdominal, pelvic and cervical pain on 8/8/02 following assisting a patient into a wheelchair. Ms. Rodriguez sought medical treatment from the Faulkner County Health Unit on the same day and was documented to have a 2nd degree prolapsed uterus and vaginal bleeding.

In my opinion, this language is sufficient to establish the requirement of proof that the claimant had objective medical findings. Additionally, I note that the letter indicates Dr. McKnight, who was forwarded records from the August 8, 2002, visit and diagnosed the claimant with the same condition, which certainly could not be faked by the claimant.

Finally, I note that while the claimant did not introduce the doctor's report for the August 8, 2002, visit, it appears that there is no controversy that the claimant sustained a prolapsed injury or that she suffered from vaginal bleeding. The respondents do not appear to be disputing that the claimant's injury occurred or that she reported an injury due to the lifting incident on August 8, 2002. Additionally, the claimant has consistently and

credibly testified regarding her condition and the reasons for it. Likewise, every medical record corroborates the claimant's testimony and assertions.

While payment for medical services does not mandate a finding of compensability, certainly the respondents would not have paid for the claimant's treatment and surgery unless their own doctors indicated there was an objective reason for surgery. In fact, as previously noted, it is clear that the respondents' own case manager agrees with Dr. McKnight's assertion and the claimant's own testimony that she suffered from a prolapsed uterus and that she needed surgery for that condition. As such, I find that it is disingenuous to now argue that she never actually sustained an injury or that it is not related to her work-injury.

For the aforementioned reasons, I must respectfully dissent.

SHELBY W. TURNER, Commissioner