

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F312995

DELOIS SMITH,
EMPLOYEE

CLAIMANT

JEFFERSON COMPREHENSIVE CARE,
EMPLOYER

RESPONDENT

COMMERCE & INDUSTRY INSURANCE CO.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED DECEMBER 6, 2006

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

Claimant represented by the HONORABLE SHEILA F. CAMPBELL,
Attorney at Law, North Little Rock, Arkansas.

Respondents represented by the HONORABLE R. SCOTT MORGAN,
Attorney at Law, Pine Bluff, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed June 1, 2006. The administrative law judge found that the claimant proved she sustained a compensable cervical injury, for which she was entitled to temporary total disability compensation and medical treatment. After reviewing the entire record *de novo*, the Full Commission reverses the opinion of the administrative law judge. We find that the claimant did not prove she sustained a

compensable neck or cervical injury. The Full Commission finds that the claimant did not prove she was entitled to additional benefits for her compensable low back injury.

I. HISTORY

The record indicates that Delois Smith, age 51, began treating with Dr. James Rodney Feild in April 1989: "Patient injured her back in August 1988 pulling." Dr. Feild's impression was "lumbar sprain," and the record indicates that he began a series of treatments with the claimant through December 2002.

The claimant's testimony indicated that she began working for the respondent-employer in 2001. The claimant testified that she was a clinical licensed nurse.

Dr. Edward H. Saer, III saw the claimant in April 2003:

She is a 47-year-old woman who has a history of work-related injury to her back that occurred in 1988. She has had intermittent problems with her back since that time. She has been followed by Dr. Rodney Fields in Memphis. She has had physical therapy in the past but has not really had any recent treatment....

X-rays today show a little narrowing at L2-3 but otherwise are unremarkable. MRI films from Memphis dated February 21, 1997, were reviewed. These show some desiccation at L4-5 and L5-S1, with a small central herniation at L4-5 and L5-S1, with a small central herniation at L4-5 and an HIZ at L5-S1.

Her symptoms certainly sound like some nerve root compression or perhaps irritation. In any event, I think it would be helpful to get an MRI to see what is going on....

Dr. Saer subsequently reviewed MRI films and noted in April 2003, "She does have a little bit of a left-sided disc bulge at L5-S1, but it really does not look like a herniation. It mildly displaces the L5 nerve root....I do not think she is going to require any surgical treatment for this."

The parties stipulated that the claimant sustained a compensable low back injury on October 13, 2003. The claimant testified, "I was going to the desk to sit down to write something on the chart. When I sat down, the chair broke, and I hit my head on the table and fell down onto the floor."

The claimant filled out an Occurrence Report on October 23, 2003. The claimant wrote that she had jarred her back, and had hit her head and elbow after a chair went to the side and fell over.

The claimant sought emergency treatment on November 11, 2003. The triage report indicated the following: "back pain - hurting about 1 week Pt states back went out when she got

out of tub this am." Additionally, "back pain history 13 years - moving pt in hospital injured back." The clinical impression was chronic low back pain, and the claimant was discharged to follow up with Dr. Saer. The record contains the following Return To Work Instructions: "Delois Smith was discharged on 11/11/03. Delois should be able to return to work in 2 days. Delois needs the following work limitations: None."

The claimant sought medical treatment on November 14, 2003: "Pt. presents to the clinic c/o neck & back pain after having to catch herself from falling out of a broken chair to the floor. Pt allegedly fell." The claimant was assessed as having cervical and lumbar strain. An x-ray of the claimant's lumbar spine on November 14, 2003 showed the following: "1. Mild spondylotic changes in the lower lumbar spine with minimal scoliosis. 2. Calcification overlying the left kidney may be a left renal calculus. Clinical correlation is recommended." An x-ray of the claimant's sacrum on November 14, 2003 showed no acute bony injury.

An x-ray of the claimant's cervical spine was also taken on November 14, 2003, with the following findings:

Straightening of the cervical lordosis suggests muscular spasm. No definite evidence of acute fracture or subluxation is seen in the cervical spine. Intervertebral disc spaces are normal. Prevertebral soft tissue is normal.

IMPRESSION:

1. No acute bony injury in the cervical spine.
2. Straightening of the cervical lordosis, probably due to muscle spasm.

The claimant saw Dr. Harold B. Betton on December 10, 2003: "Ms. Smith presents to the office status post fall at Jefferson County Comprehensive Health Clinic. She was attempting to sit in a chair when the leg broke causing her to fall injuring her right elbow, jarring her back and sustaining pain in the cervical spine. She felt no effects until November 12, 2003 when she saw a physician in the emergency room." Dr. Betton assessed, "Lumbar and Cervical spine pain (musculoligamentous sprain)." Dr. Betton also planned the following: "MRI of the Cervical and Lumbar Spine; I am perplexed that it took so long after the fall to experience symptoms. She carries a problem of chronic back pain and this may represent an exacerbation of a chronic underlying condition. RTC in one week."

An MRI of the claimant's cervical spine was taken on December 12, 2003, with the following findings:

There is minimal annular disc bulging at C4-5 and C6-7, and moderate annular disc bulging at C5-6. These annular disc bulges, however, produce only mild ventral sac compression with no visible cord or nerve root impingement. No focal or eccentric disc extrusion is seen. The spinal cord is normal in size and signal intensity. The craniocervical junction is unremarkable. No paraspinous lesions are seen.

IMPRESSION:

Minor disc bulges at C4-5, C5-6, and C6-7 levels as described, without visible cord or nerve root impingement. Otherwise negative MRI of the cervical spine.

The claimant saw Dr. Saer in December 2003: "She is back because she is having more trouble with her back and left leg....I reviewed her prior MRI films and report. She does have a little bulging on the left side at L4-5. This does not look like it is compressing the L4 nerve root at all. Her symptoms certainly could be related to some mild irritation. We will set her up for an ESI to see if that will help. I would like her to get back with me afterwards."

The claimant continued to follow up with Dr. Betton. On January 12, 2004, Dr. Betton assessed "Cervical spine musculoligamentous sprain with documented disk disease." The claimant's testimony indicated that the respondents

controverted treatment for her neck beginning in about January 2004.

The claimant followed up with Dr. Saer in March 2004:

She has a long history of problems with her back and left leg. She has had MRIs in the past that have shown some disc bulging at L4-5. She had one done at Chenal on 04/22/03 that showed focal left lateral protrusion impinging on the left L5 nerve root. I thought this was probably over-read a little bit and did not think she needed any surgery. When she was here last on December 16th, I recommended an epidural steroid injection.

Apparently workers' comp denied that. She is back today with complaints of neck and lower back pain. She still describes pain in her back and down her left leg.

She also reports pain in her neck. She had an injury at work in October 2003. She was sitting in a chair and the leg broke. She hit her head on the table that was next to the chair....

She describes pain in the neck and left shoulder....She is not able to work now and has been off work since December....

Axial compression of the head causes pain in the neck. She has no spasm....Lumbar motion is somewhat limited as well, but she has no spasm....

I reviewed the MRI films that were done at BMC on 12/12/03. These are of the cervical and lumbar region. I reviewed the films as well as the reports today. She has some mild disc bulging at several levels in the cervical spine, but it really looks pretty normal for age. Lumbar MRI shows central disc bulge/annular tear with mild stenosis. She has some desiccation at L2-3. There is no focal disc herniation.

Dr. Saer's impression was "Neck and back pain....I am not sure why she did not mention this problem with her neck when she was here in December. At this point, though, I do not think that she needs any surgical treatment on either her neck or her back. Some physical therapy would be a good idea. I would recommend that we also get her to see someone who specializes in nonoperative management."

Dr. Saer indicated on March 9, 2004 that the claimant should not return to work until "reevaluated." Dr. Saer informed a case manager with CompChoice on March 25, 2004, "I do not think that she is going to require any surgical treatment. Unfortunately, she has not really had any specific treatment for this other than some medication. She has not had any physical therapy or any steroid injections. I do not think she is at MMI from the standpoint of her injury, because she has not had any specific treatment."

Dr. Saer again wrote to the case manager on April 27, 2004:

The injury to which I allude in the statement when I say, "I do not think she is at MMI from the standpoint of her injury", was the recent injury in October 2003. The treatment recommended is nonoperative....

I believe she has had a strain or a sprain, and that is the basis of my recommendation for treatment of the October 2003 injury. She has some preexisting degenerative changes as well, but I think the October 2003 injury just aggravated her preexisting condition.

I have not placed any additional restrictions on her.

I would anticipate MMI after she has completed a course of therapy for this recent injury. She does not have a problem that is going to require any surgical treatment, and I plan to see her back only as needed in the future.

Dr. Betton assessed "Neck pain with muscle spasm" on May 7, 2004.

On May 24, 2004, Dr. Brent Sprinkle evaluated the claimant for increased cervical and shoulder pain. Dr. Sprinkle's impression was "Cervical strain." Dr. Sprinkle planned conservative treatment and stated, "As far as return to work, I do not really have anything objective to justify her not working, but I think while we are trying to go through therapy to calm this down, initially, a return-to-work restriction of no lifting over 50 pounds may be reasonable."

Dr. Sprinkle stated on June 9, 2004, "There is some confusion on which problems to address, and, after speaking with the case manager, it is the conclusion that I am to

address the low back." Dr. Sprinkle gave the following impression: "1. Left greater trochanteric bursitis. 2. Piriformis syndrome. 3. Left lateral bulge L5-S1." Dr. Sprinkle continued conservative treatment and work restrictions.

An MR scan of the claimant's cervical spine was taken on January 21, 2005, with the impression, "Mild degenerative disk disease. The study is otherwise unremarkable."

Dr. Sprinkle gave the following impression on January 27, 2005: "1. Lumbar strain. 2. Lumbar disc degeneration. 3. Low back pain. 4. Lumbar myofascial pain." Dr. Sprinkle's treatment plan included the following:

3. She is at maximum medical improvement.
4. She can return to work. Her permanent work restrictions will be based on her FCE which will be sedentary work, exerting 10 pounds of force occasionally and never will she attempt to lift, carry, push, pull or otherwise move objects including human bodies....
5. She does have some degenerative disc changes on her MRI scan which were most likely present prior to her work injury. She does not have any significant focal disc protrusion or extrusions, and was not felt by Dr. Saer to be a surgical candidate. She did have a small annular tear at L4-5 but these usually resolve with time.
6. Since that did not co-exist with significant focal excentric disc extrusion or protrusion, or significant evidence of nerve root entrapment, and with a negative EMG for radiculopathy I would conclude at 0% permanent impairment rating.

A statement from counsel at hearing indicated that the respondents controverted additional medical treatment after September 26, 2005.

A pre-hearing order was filed on December 12, 2005. The claimant contended, among other things, that she sustained a compensable injury to her neck on October 13, 2003. The claimant contended that she was entitled to reasonably necessary medical treatment, and that she was entitled to temporary total disability compensation from October 13, 2003 through May 29, 2004.

The respondents contended that the claimant did not sustain a compensable injury to her neck, and that she was not entitled to temporary total disability or medical treatment. The respondents contended that the claimant had been paid all benefits for which she was entitled with regard to the compensable low back injury.

The parties agreed to litigate the following issues:

- (1) Whether the claimant sustained a compensable cervical injury on 10/13/03.
- (2) If the cervical compensability is overcome, whether the claimant is entitled to associated medical benefits, TTD benefits from 10/13/03, to 5/29/04, attorney fees and travel expenses.
- (3) Whether the claimant is entitled to additional TTD and medical benefits associated with her compensable low back injury.

The administrative law judge found, in pertinent part:

3) The claimant has proven by a preponderance of the evidence that she remained in her healing period and totally incapacitated to work for the period of October 13, 2003 through May 24, 2004, due to her stipulated compensable back injury of October 13, 2003.

4) The claimant has therefore proven ... that she is entitled to TTD benefits due to her admittedly compensable back injury of October 13, 2003 for the period of October 13, 2003 through May 29, 2004 at the stipulated rate. Said amount shall be reduced by the days the claimant worked for, or drew TTD from the respondents between October 13, 2003 through May 24, 2004.

5) The claimant has proven ... that she sustained a compensable cervical injury on October 13, 2003.

6) The claimant has proven ... she is entitled to all reasonably necessary medical treatment related to her compensable neck and back injuries of October 13, 2003, and such is the responsibility of the respondents. Further, I find the treatment contained in the record herein to the claimant's neck and back to be reasonable, necessary and related to the compensable injuries.

7) The claimant has proven ... she is entitled to TTD benefits related to her compensable cervical injury of October 13, 2003, for the period of October 13, 2003 through May 24, 2004. Said amount to be reduced by any TTD or work wages received by the claimant during said period.

The respondents appeal to the Full Commission.

II. ADJUDICATION

A. Compensability of alleged neck injury

Ark. Code Ann. §11-9-102(4)(A)(i) defines "compensable injury":

An 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[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4) (D). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16) (A) (i). The claimant's burden of proof shall be a preponderance of the evidence. Ark. Code Ann. §11-9-102(4) (E) (i).

In the present matter, the claimant contends that she sustained a compensable injury to her neck on October 13, 2003. The Full Commission finds that the claimant did not prove she sustained a compensable injury to her neck or cervical spine. The parties stipulated that the claimant sustained a compensable low back injury on October 13, 2003. The claimant testified that she fell from a chair and hit her head on a table. When the claimant filled out an Occurrence Report on October 23, 2003, the claimant wrote that she had jarred her back and hit her head and elbow. The claimant did not report that she had injured her neck.

The claimant sought emergency treatment in November 2003 and was treated exclusively for low back pain.

The claimant did not complain of neck pain until November 14, 2003. The Full Commission recognizes that the claimant was assessed as having "cervical strain" on that date. However, the impression from an x-ray on November 14, 2003 was "no acute bony injury in the cervical spine." The x-ray also showed, "Straightening of the cervical lordosis, probably due to muscle spasm." Dorland's Illustrated Medical Dictionary, 28th Ed., defines "lordosis" as "abnormally increased curvature" of the spine. The evidence before us does not demonstrate that the claimant's fall on October 13, 2003 was the cause of the straightening of cervical lordosis or probable muscle spasm reported in the November 14, 2003 x-ray. The December 2003 MRI showed minor disc bulges at C4-5, C5-6, and C6-7, but was otherwise negative. We also note the lone notation of "neck pain with muscle spasm" on May 7, 2004. Even if this assessment was based on a physical examination of the claimant, the record does not demonstrate a causal connection between this assessment of muscle spasm and the October 13, 2003 accident.

There is no probative evidence before the Commission demonstrating that the claimant sustained a compensable neck or cervical injury. Based on the record before us, the Full Commission finds that the claimant did not prove she sustained an accidental injury causing physical harm to her neck or cervical spine. The claimant did not prove that she sustained an injury to her neck or cervical spine arising out of and in the course of employment or which required medical services. Nor did the claimant establish a compensable injury to her neck or cervical spine by medical evidence supported by objective findings. The decision of the administrative law judge is reversed.

B. Back injury

The record indicates that Dr. Saer diagnosed the claimant as having a degenerative lumbar condition in April 2003. The parties stipulated that the claimant sustained a compensable low back injury in October 2003. The claimant was returned to work without restrictions on November 11, 2003, but the claimant testified that she did not return to work. Dr. Betton subsequently assessed lumbar spine pain, "musculoligamentous sprain." Dr. Saer reviewed an MRI and noted in December 2003, "She does have a little bulging on

the left side at L4-5. This does not look like it is compressing the L4 nerve root at all. Her symptoms certainly could be related to some mild irritation." Dr. Saer stated in March 2004 that the claimant did not need surgery on her back. Dr. Saer opined on March 25, 2004 that the claimant had not reached maximum medical improvement for her back injury. In April 2004, Dr. Saer wrote that the claimant had sustained a sprain or strain, that the October 2003 injury had "aggravated her preexisting condition" in the lumbar spine.

Dr. Sprinkle pronounced maximum medical improvement on January 27, 2005. There are no medical opinions of record contradicting Dr. Sprinkle's finding of maximum medical improvement. The respondents argue on appeal that they should not be obligated to pay additional benefits after July 28, 2005. The Full Commission finds that the stipulated compensable injury to the claimant's back was an aggravation of a pre-existing condition. This aggravation, i.e., a sprain or strain to the claimant's back/lumbar spine, resolved no later than January 27, 2005, the date Dr. Sprinkle found maximum medical improvement. The respondents in the present matter are not obligated to pay any benefits

for the claimant's back after the date of controversion, July 28, 2005.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove she sustained a compensable injury to her neck or cervical spine. We find that the claimant reached the end of her healing period for the compensable back injury no later than January 27, 2005. The claimant did not prove she was entitled to additional benefits for her compensable back injury. The decision of the administrative law judge is reversed, and this claim is denied and dismissed.

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 cervical or neck injury and denying her

additional medical benefits for her admittedly compensable back injury and her alleged cervical injury. After a review of the evidence, I find that the medical records show that the claimant sustained a cervical strain as a result of her fall in October 2003. I further find that this injury was shown by medical records and Dr. Saer's opinion which directly related her associated problems with her fall at work in October 2003. I also find that the preponderance of the medical evidence shows the claimant should be entitled to ongoing medical benefits for her cervical and lumbar injuries. For these reasons, I respectfully dissent.

The Majority contends that the claimant did not sustain a compensable cervical injury. In making this argument, they find that the claimant did not initially report a neck injury. They also opine that the medical records fail to establish a causal connection between the claimant's work injury and her objective injuries to the neck. However, after a review of the record, I must disagree with these conclusions.

On October 23, 2003, the claimant completed an occurrence report describing how she sustained her injury. The claimant indicated that when she sat down, the leg on

the chair broke. In response to the inquiry, "INJURY(IES) INVOLVED", the claimant wrote, "Jared (sic) back. hit (sic) head and elbow." In my opinion, this language reflects the claimant did report an injury that was consistent with obtaining a neck injury. Certainly, a fall severe enough to cause her to jar her back and hit multiple parts of her body, including her head, would be consistent with receiving a neck sprain. While the Majority is correct that the claimant did not specifically report a neck injury, in my opinion it is clear that she reported she hit her head, which is consistent with having a neck injury.

Furthermore, I note the claimant's testimony at the time of the hearing, which further corroborates her claim that she injured her neck as a direct result of falling out of the chair. The claimant described the occurrence of the injury as follows,

A Well, I was going to the desk to sit down to write something on the chart. When I sat down, the chair broke, and I hit my head on the table and I fell down onto the floor.

Q You indicated you hit your head.

A The lower part of my neck.

Q When the chair broke and you fell to the floor, what type of floor was this?

A This was concrete floor.

Q And what did you hit your head and neck against?

A On the table next to the desk. I have a table next to my desk with a fax machine on it.

In my opinion, when considering this testimony, in conjunction with the occurrence report, it is evident that the claimant hit her head/neck area, thereby causing her to sustain a cervical strain.

Additionally, I find that the medical reports support a finding that the claimant sustained a cervical injury. I note that prior to the work-related injury, there is no evidence that the claimant required treatment for neck pain or that she had been diagnosed with any neck condition. Yet, the claimant testified that after the accident, she suffered from neck pain, indicating that the fall was the cause of her symptoms.

The medical reports also provide objective medical findings of the claimant's injury and relate it to the claimant's fall at work. On November 14, 2003, the claimant was treated for neck and back pain which she attributed to

the fall at work. An x-ray completed that day indicated that the claimant suffered from, "Straightening of the cervical lordosis probably due to muscle spasm." The claimant was prescribed Toradol and Flexeril which further provides evidence of the extent and nature of her neck injury. In my opinion, since the claimant reported the onset of her symptoms began in October, and since the diagnostic studies showed findings consistent with her fall at work, it is evident that the claimant's spasms and the straightening of her cervical lordosis were directly related to the work-related incident. _____

Furthermore, I note that Dr. Edward H. Saer, the physician responsible for treating the claimant for her back problems prior to the October incident also opined that he believed that the claimant's work-related injury was the cause for her cervical symptoms. On April 27, 2004, Dr. Saer indicated that he did not believe the claimant was at MMI and that the injury he was treating the claimant for was directly related to the October 2003 incident. He further opined,

I believe she has had a strain or a sprain, and that is the basis of my recommendation for treatment of the

October 2003 injury. She has some preexisting degenerative changes as well, but I think that the October 2003 injury just aggravated her preexisting condition.

_____As Dr. Saer treated the claimant prior to her fall at work, I find that he was well suited to evaluate the claimant and her change in condition. Accordingly, I find his opinion on causation should have been given great weight.

_____Finally, I find that the claimant has shown that she is entitled to ongoing medical treatment in relation to her cervical injury. While Dr. Sprinkle released the claimant for care from her lumbar back condition on January 27, 2005, there is no indication that the claimant was released from care for her cervical condition. In fact, Dr. Sprinkle specifically indicated that after speaking with the case manager, he reached the conclusion he was only to address the claimant's low back. Furthermore, there are no other medical reports indicating that the claimant's cervical symptoms have resolved. Accordingly, I find that she should have been awarded ongoing treatment for her cervical condition.

_____ I further find that the claimant has shown she is entitled to ongoing treatment for her lumbar injury.

Pursuant to Arkansas Workers' Compensation law, medical treatment intended to reduce or enable an injured worker to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment. Tina Haskins v. TEC, Full Workers' Compensation Commission, July 14, 1993 (E107391); Billy Chronister v. Lavaca Vault, Full Workers' Compensation Commission, June 20, 1991 (D704562). Additionally, an employer may remain liable for medical treatment reasonably necessary to maintain a claimant's condition after the healing period ends. Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

While Dr. Sprinkle released the claimant to return to work and indicated she was at MMI in January 2005, he did not indicate that the claimant would not need any maintenance medication nor did he indicate that she had been returned to a pre-injury status in her medical condition. Likewise, he did not indicate that the claimant's condition had returned to a state that was equal to the time period before her admittedly compensable injury. Instead he noted

that the claimant had pre-existing degenerative disease, but indicated that the claimant's work injury had exacerbated her condition. He also instructed her to continue taking Flexeril and to continue using her "RS medical device", indicating her condition had not resolved. Furthermore, he continued to assess her with a lumbar strain, indicating that she had ongoing problems directly related to the admittedly compensable injury.

_____ Ultimately, I find that the claimant has shown proof of her cervical injury by a preponderance of the evidence. The claimant's testimony, the occurrence report completed after the accident, and the medical records all show that the claimant did not experience neck symptoms until after her fall at work. Likewise, the objective findings found in the medical records are consistent with the nature of the claimant's fall and the claimant's treating physician, Dr. Saer, related the claimant's condition and need for ongoing treatment directly to the injury from work, thereby establishing causation.

Furthermore, I find that the claimant has shown she is entitled to ongoing medical benefits for her lumbar strain. The claimant's back strain was accepted by the respondents

and the medical reports fail to indicate that the claimant's condition returned to pre-injury status. Accordingly, I would award her treatment in the form of maintenance medication (i.e. Flexeril) pursuant Dr. Sprinkle's recommendation.

_____ For the aforementioned reasons, I respectfully dissent.

SHELBY W. TURNER, Commissioner