

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F601308

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| MARISA BOBO, EMPLOYEE | CLAIMANT |
| ARBOR OAKS HEALTHCARE REHAB, EMPLOYER | RESPONDENT |
| PENNSYLVANIA MANUFACTURERS' ASSOC., CARRIER | RESPONDENT |

OPINION FILED DECEMBER 11, 2007

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

Claimant represented by the HONORABLE SHERRI ARMAN R.
MCDONOUGH, Attorney at Law, Hot Springs, Arkansas.

Respondent represented by the HONORABLE GUY WADE,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

This case comes before the Commission on
remand from the Court of Appeals. The Court of Appeals
issued a decision finding that the Commission
arbitrarily disregarded the medical evidence the
claimant presented, showing some objective signs of
injury. Specifically, the Court of Appeals noted that
the Commission ignored the January 13, 2006 emergency
room note, where the physician diagnosed the claimant as

having a "possible subluxation of AC process and clavical." Additionally, the Court of Appeals noted that the Commission ignored the x-ray report which revealed, "slight up-riding of the distal end of the clavical...AC widening right shoulder." As such, we find that the claimant suffered a compensable injury supported by objective medical evidence and therefore reverse the opinion of the Administrative Law Judge.

The claimant was injured on January 11, 2006. The injury occurred when the claimant slipped and fell. The claimant testified that she left her home around 5:40 a.m. and that she arrived at the respondents at around 5:45. She said that after she arrived, she got out of her car and went to the front door. On the set of doors was a sign indicating that the floors were wet and had been waxed and to use the other door. The claimant went in the left door. The claimant proceeded to go to clock in. While on her way, she slipped and fell.

The claimant further described that she fell on her right hand and knee all the way to the floor. The claimant reported the incident to Gail Jones, Charge Nurse. She also completed paperwork regarding her fall.

She said that another CNA, Teresa Lawrence, also saw her fall.

The claimant testified that she did not seek medical attention at that point because she did not believe it was necessary. The next morning, when the claimant awoke, she felt pain in her right shoulder. She contacted Denise Bradley and asked if she could go to the emergency room. Bradley approved the visit.

The claimant initially received medical treatment on January 13, 2006. The claimant reported falling on Wednesday and suffering from pain in her right shoulder and right upper arm. The claimant submitted to x-rays. The report from the x-rays indicates that the claimant's shoulder was normal. However, notes from the emergency room visit indicate to the contrary and indicate that the x-rays showed possible AC sublaxation. The claimant was prescribed Flexeril, Hydrocodone, and a sling for her right arm. The claimant was prohibited from lifting with her right arm for three days and instructed to see Dr. Rivas on the following Monday.

On January 14, 2006, the claimant was treated by Dr. Rivas. Dr. Rivas recommended the claimant have

an MRI and placed her on light duty with no lifting. He also noted the claimant had been discharged, prescribed the claimant Flexeril and indicated that, "Workmans Comp" would not be willing to pay for the MRI.

The claimant continued to receive treatment. On March 17, 2006, another set of x-rays was performed. The x-ray report provides,

X-RAY REPORT: X-rays taken internal and external rotational views right shoulder, outside source. Overall, there is no fracture or dislocation. There is slight up-riding of the distal end of the clavicle. There is no AC joint arthritis. There is slight widening in the AP view.
IMPRESSION: AC widening right shoulder.

The physician opined, "Examination of her right shoulder reveals pain to palpation and range of motion. There is pain to resistance, abduction resistance, external rotation and impingement type maneuver." The physician diagnosed the claimant with, "Rotator cuff tendonitis right shoulder brought on by fall at work." He also prescribed the claimant physical therapy. On April 18, 2006, the claimant was noted to have improvement in her condition. The physician indicated that the claimant was to continue with at-home exercises and that she could return to work whenever she wished.

The claimant has shown that her injury was shown by objective findings. Specifically, we find that despite the respondent's assertions, the claimant's x-rays from the day of the injury showed objective signs of an injury. Likewise, these findings were confirmed on March 17, 2006, when the claimant had a second set of x-rays performed.

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.

The preponderance of the evidence shows that the claimant fell on January 11, 2006. There is no evidence to support a finding that she injured herself prior to receiving treatment on January 13, 2006.

Likewise, the record is completely devoid of any evidence indicating that the claimant had ever suffered from shoulder problems in the past.

The Administrative Law Judge denied benefits on the basis that the claimant had no objective findings. She opined, "The January 13, 2006, x-rays revealed a normal right shoulder. The sparse medial evidence did not mention any swelling or muscle spasms or other objective findings." We find that this conclusion is in error, as there were objective medical findings. Additionally, the Court of Appeals noted that the Administrative Law Judge's opinion does not address relevant pieces of medical information.

Specifically, the x-rays performed on January 13, 2006, showed abnormalities. While the x-ray report indicated the claimant's shoulder looked normal, notes in the emergency records suggest otherwise. Specifically, we note the report provides that the x-rays did not reveal a fracture but did reveal, "possible subluxation of ac process + clavicle". Likewise, the claimant was given Flexeril. Subluxation of the ac process and clavicle as shown by an x-ray illustrates the existence of objective findings.

Additionally, we note that later, another set of x-rays revealed that the claimant had subluxation of the ac process. On March 17, 2006, the claimant submitted to a second set of x-rays. They revealed that the claimant had AC widening of the right shoulder. As this diagnostic report was consistent with the readings of the x-rays from January 13, 2006, we find that the claimant has met her burden of showing objective findings of a compensable injury.

The present case is similar to Meister v. Safety Kleen, 339 Ark. 91, 3 S.W.3d 320 (1999). In Meister the claimant was taken directly from the site of the accident for medical care. He was diagnosed with a contusion of the lumbar spine, but the medical records did not specifically indicate the physician observed the contusion. However, around one month later, an x-ray revealed soft tissue swelling of the claimant's hip. The Commission denied benefits on the basis that the claimant had not shown objective findings of an injury. The Court of Appeals affirmed the Commission. However, the Supreme Court of Arkansas reversed the Court of Appeals and the Commission. In reversing the Court of Appeals and Commission, the Court opined,

In short, Meister had no voluntary control over the x-ray exam which was consistent with and tended to corroborate the first physician's diagnosis.

In conclusion, while the Commission found that the record revealed no objective medical findings of a hematoma or bruise (contusion), Dr. Moseley's x-ray examination was such an objective finding that existed and could well have been considered as corroborating the contusion that Meister's treating physician originally diagnosed.

Id.

Just as in Meister, the claimant's initial medical records in the present case were vague with regard to whether objective findings existed. Like in Meister, the claimant in the present case was diagnosed with an objective condition that was later corroborated by x-rays, which are a diagnostic tool that the claimant cannot control. However, we find that the facts in the present case are even more convincing than in Meister. In the present instance, it is clear that even from the first visit, the claimant's physician was relying on x-rays in making his diagnosis of possible subluxation. Likewise, in the present instance, the medical evidence from the second set of x-rays was performed on the same body part as before, whereas in Meister, the initial

objective finding was located on the claimant's lumbar spine and the subsequent finding was in relation to the claimant's hip. Accordingly, we find that the preponderance of the evidence shows that the claimant had objective findings in the form of subluxation.

The respondents also contended that the claimant failed to show a causal connection between her work-related injury and her medical condition. However, the claimant's testimony and the medical evidence all support a finding that the claimant's injury was directly related to her fall at work.

When the primary injury is shown to have arisen out of and in the course of the employment, the employer is responsible for any natural consequence that flows from that injury. Jeter v. B.R. McGinty Mech., 62 Ark.App. 53, 968 S.W.2d 645 (1998). The basic test is whether there is a causal connection between the two episodes. Bearden Lumber Co. v. Bond, 7 Ark.App. 65, 644 S.W.2d 321 (1983). It is the Commission's duty to determine if a causal connection exists between the primary injury and any additional injuries. Williams v. Prostaff Temporaries, 336 Ark. 510, 988 S.W.2d 1 (1999).

While medical evidence is not required to show a causal connection, claimant must show proof by a preponderance of the evidence. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999).

It has long been recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury upon a showing that the injury manifested itself within a reasonable period of time following the incident, is logically attributable to the incident, and there is not other reasonable explanation for the injury. Hall v. Pittman Construction Co., 235 Ark. 104, 357 S.W.2d 263 (1962).

If the claimant's disability arises soon after the accident and is logically attributable to it, with nothing to suggest any other explanation for the employee's condition, we may say without hesitation that there is no substantial evidence to sustain the Commission's refusal to make an award. Clark v. Ottenheimer, 229 Ark. 383, 314 S.W.2d 497 (1958); Johnson v. Little Rock School District, Full Commission Opinion filed April 4, 2002 (E700511 & F011921). But,

if the disability does not manifest itself until many months after the accident, so that reasonable men might disagree about the existence of a causal connection between the accident and the disability, the issue becomes one of fact upon which the Commission's conclusion is controlling. Kivett v. Redmond Co., 234 Ark. 855, 355 S.W.2d 172 (1962).

In the present case, the claimant had no history of having any shoulder condition. We also note that there is no explanation except for falling at work to explain the claimant's shoulder condition in the record. Likewise, it is undisputed that she fell at work. While she did not initially report she was injured, she did feel it was a serious enough fall to warrant completing an accident report. The claimant testified that when she woke up the following morning her shoulder was sore. We find this to be consistent with a fall, in that, the effects of falling are often not realized until a brief period of time has lapsed. Additionally, the claimant sought medical attention less than a week after falling at work, which is also consistent with having sustained an injury at work.

Finally, we note that on March 17, 2006, Dr. Olive indicated that the claimant's tendonitis was "brought on by fall at work." Thus, the claimant has shown by a preponderance of the evidence that her AC subluxation was caused by her fall at work.

For the aforementioned reasons, we find that the claimant sustained a compensable work-related injury supported by objective medical evidence. As such, the claimant is entitled to medical and temporary total disability benefits in relation to her work-related injury.

For the aforementioned reasons, we reverse the Administrative Law Judge's opinion.

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. §11-8-715 (Repl. 1996) with Ark. Code Ann. §11-9-715 (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

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion finding the claimant sustained a compensable injury. The evidence which the Court of Appeals found that we failed to initially consider was in fact considered as it was discussed in the original dissenting opinion. The majority was originally not persuaded to find that such evidence amounted to objective medical evidence of a compensable injury. I continue with my original findings.

The claimant was employed as a CNA for respondent employer. She contends that on January 11, 2006, she slipped on the wet floor and fell to her right knee catching herself with her right hand. The claimant

testified that she did not feel any pain at that time. The claimant reported the incident but continued to work until noon, as she had prearranged to take off early that day to take her son to the doctor. According to the claimant, that evening she performed all her normal home duties such as washing clothes and cooking supper. The claimant testified that she woke up the next morning with a sore shoulder. On the following morning, she called her employer and requested permission to seek medical attention.

The claimant reported to the Hot Springs County hospital on January 13, 2006, around 8:30 p.m. with complaints of pain to right shoulder and upper arm. X-rays taken at that time did not reveal any evidence of injury. The physical examination revealed pain and tenderness, but no objective evidence of injury. After examining the claimant and reviewing her x-rays, the emergency room physician noted the possibility of subluxation of the AC process and clavicle. The claimant was diagnosed with right shoulder pain with AC subluxation with very decreased rang of motion, was prescribed pain medication and advised to follow-up with

her family physician.

The claimant was seen by Dr. Carlos Rivas on January 14, 2006. Dr. Rivas noted that the claimant had limited range of motion in her right shoulder and ordered an MRI. Respondents controverted the claim so the MRI was not performed. Although Dr. Rivas's handwriting is difficult to decipher, there does not appear to be any evidence of objective medical findings noted by Dr. Rivas.

On March 17, 2006, the claimant was seen by Dr. Robert Olive at Orthopaedic Associates on referral from Dr. Rivas. An examination of the claimant at that time revealed:

GENERAL: Reveals a somewhat unhealthy appearing 26 year old white female, 5'6", 243 pounds. BJE: No cyanosis, clubbing, or edema. Examination of her right shoulder reveals pain to palpation and range of motion. There is pain to resistance, abduction resistance, external rotation and impingement type maneuver. X-rays do not reveal any major abnormalities.

The claimant was diagnosed with rotator cuff tendonitis of the right shoulder and was prescribed physical therapy. A follow-up examination April 18,

2006, revealed that the claimant's subjective complaints had improved following this conservative treatment.

Dr. Olive specifically read the x-rays taken on March 17, 2006, as follows:

X-rays taken internal and external rotational views right shoulder, outside source. Overall, there is no fracture or dislocation. There is slight up-riding of the distal end of the clavicle. There is no AC joint arthritis. There is slight widening in the AP view.

I find that the claimant has failed to establish a compensable injury which is supported by objective medical findings as required by A.C.A. § 11-9-102(4)(D). The January 13, 2006, x-rays which were taken within two days of the claimant's work related fall revealed a normal right shoulder without any objective evidence of an injury. Likewise, neither the emergency room physician nor Dr. Rivas noted the presence of any objective medical findings when the claimant was examined during the first week following her fall. The claimant was assessed with a "possible subluxation" of the acromioclavicular joint by the emergency room physician based solely upon the claimant's subjective

complaints of pain. The x-rays taken at that time did not support a finding of any traumatic change in the claimant's right shoulder and specifically did not reveal any subluxation. Likewise, the x-rays taken on March 16, 2006, while read by Dr. Olive to reveal "a slight up-riding of the distal end of the clavicle... slight widening in the AP view", Dr. Olive did not interpret these findings as suggestive of an injury. Dr. Olive noted in his written report that the "x-rays do not reveal any major abnormalities." After reviewing these x-rays which he found to display an "AC widening right shoulder" Dr. Olive did not diagnose the claimant with an injury to the AC joint; rather, Dr. Olive diagnosed the claimant with rotator cuff tendonitis, which is inflammation of the rotator cuff tendon sheath. Accordingly, while x-rays taken approximately two months after the claimant's fall may have revealed objective medical findings of AC widening, I find that the claimant has failed to establish that her shoulder pain eventually diagnosed as rotator cuff tendonitis is supported by objective medical findings. The acromioclavicular joint is separate and apart from the

rotator cuff; thus an objective finding of one does not translate to an objective finding of the other.

Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner