

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F604617

CURTIS JONES, EMPLOYEE	CLAIMANT
CRAWFORD COUNTY EMPLOYER	RESPONDENT
AAC RISK MANAGEMENT SERVICES, TPA/INSURANCE CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 11, 2007

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

Claimant represented by the HONORABLE STEPHEN SHARUM, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE MICHAEL RYBURN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed January 26, 2007. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On April 15, 2006, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On April 15, 2006, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$259.00 for total

disability and \$195.00 for permanent partial disability.

4. On April 15, 2006, the claimant sustained a compensable injury to his left hip. Specifically, he has proven by the greater weight of the credible evidence that on that date he sustained a physical injury that is "established" by medical evidence, supported by objective findings, arose out of and occurred during the course of his employment with the respondent, was caused by a specific incident, is identifiable by time and place of occurrence, caused internal physical harm to his body, required medical services, and resulted in disability.

5. The medical services rendered to the claimant by and at the direction of personnel at Sparks Regional Medical Center emergency room, by and at the direction of Dr. James Buie, and by and at the direction of Dr. Marvin Mumme for his left hip difficulties after April 15, 2006 through the hearing, represent "reasonably necessary medical services" for his compensable injury of April 15, 2006. Specifically, these medical services were necessitated by or connected with the compensable injury, were medically appropriate, and accomplished the purpose or goals for which services were intended.

6. The claimant has proven by the greater weight of the credible evidence that he was rendered temporarily totally disabled as the result of the effects of his compensable injury of April 15, 2006, for the period of April 16, 2006 through September 2, 2006. Specifically, he has proven that during this period he continued within his healing period from the effects of his compensable injury and continued to be totally disabled from performing all forms of regular gainful employment as a result of this injury.

7. The respondents have denied the occurrence of a compensable injury to the claimant's right hip and have controverted this claim in its entirety.

8. A reasonable fee for the claimant's attorneys is the maximum statutory attorney's fee on the controverted temporary total disability benefits herein awarded.

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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the January 26, 2007 decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

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. 2002).

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 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. The respondent appeals the decision of the administrative law judge finding that the claimant proved by a preponderance of the evidence that he sustained a compensable injury to his hip. Based upon my de novo review of the record I find that the claimant has failed to meet his burden of proof. Accordingly, I would reverse the decision of the administrative law

judge. I find that the claimant had a temporary aggravation of a pre-existing condition.

The claimant was employed by the respondent employer as a jailer at the County Detention Center. On April 15, 2006, he was checking his mail and tripped over a computer that was sitting on the floor. The claimant's hip was dislocated. The claimant was taken by ambulance to the hospital where his hip was put back into place. He was discharged the next day. The medical evidence indicates that the claimant had undergone a successful reduction of his dislocated hip and was released in stable condition. The claimant was required to wear a long leg splint and was to follow up with Dr. Marvin Mumme in 7 to 10 days.

The claimant had a hip replacement in 1997 and previously had hip dislocations prior to this incident. The claimant admitted to at least three dislocations from 1997 to April 15, 2006. The claimant testified that when his hip is dislocated, the hip would be popped back into place and he would be fine. The claimant had an incident where he was getting out of his vehicle and another when he was playing softball.

On April 17, 2006, the claimant sought medical attention. The claimant testified that he heard a cracking and snapping sound in his groin and left hip.

He stated he was picking up his granddaughter at church when this happened. The claimant's medical examination revealed that he had not experienced another dislocation and the prosthetic hip joint remained in proper alignment. Dr. Buie diagnosed the claimant with a fracture of the liner of the artificial hip joint. The claimant was discharged on April 19, 2006 and was to follow up with Dr. Mumme.

The claimant returned to Dr. Mumme on April 28, 2006. Dr. Mumme diagnosed the claimant with a recurrent dislocation of the left prosthetic hip with a possible failure of some of the components of the prosthesis. Dr. Mumme recommended a replacement of the claimant's current prosthesis with a different and more stable device. The claimant's hip was replaced by Dr. Mumme on June 8, 2006. At the time of the surgery, the cup was inspected and found to have some deformity due to recurrent dislocations. However, the cup was not broken or cracked due to trauma. On September 2, 2006, the claimant was released to return to work. The claimant continues to be employed by the respondent employer.

The majority finds that the claimant proved by a preponderance of the evidence that he sustained a compensable injury to his left hip and that the

respondents are responsible for the medical expenses related to the replacement of the claimant's hip. The respondents contend that the claimant had a recurrence of a non work related problem.

Ark. Code Ann. §11-9-102(4) (A) (i) (Supp. 2005) 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 is required to show that a causal connection exists 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).

In addition to establishing the general requirements for compensability set forth in §11-9-102(4)(A)(i), the claimant must establish a compensable injury by medical evidence, supported by objective findings as defined in §11-9-102(16). That a compensable injury be established by medical evidence supported by objective findings applies only to the existence and extent of the injury. Stephens Truck Lines v. Millican, 58 Ark. App. 275, 950 S.W.2d 472 (1997). "Objective findings" are those that cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16). Moreover, objective medical evidence, while necessary to establish the existence and extent of an injury, is not necessary to establish a causal relationship between the injury and the work-related accident. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. App. 443, 990 S.W.2d 522 (1999). The onset of pain does not satisfy our statutory criteria for benefits. Test results that are based upon the patient's description of the sensations produced by various stimuli are clearly under the voluntary control of the patient and therefore, by statutory definition, do not constitute objective findings. Duke v. Regis Hair Stylists, 55 Ark. 327, 935 S.W.2d 600 (1996). Finally, medial opinions addressing compensability and permanent impairment must be stated within a reasonable degree of

medical certainty. Ark. Code Ann. §11-9-102(16) (i) (B); Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000).

There is no presumption that a claim is indeed compensable. O.K. Processing, Inc., et al v. Servold, 265 Ark. 352, 578 S.W.2d 224 (1979). Crouch Funeral Home, et al v. Crouch, 262 Ark. 417, 557 S.W.2d 392 (1977). 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 Serv. LLC, 75 Ark. App. 156, 55 S.W.3d 791 (2001). In other words, in a workers' compensation case, the claimant has the burden of proving by a preponderance of the evidence that his claim is compensable, i.e., that his injury was the result of an accident that arose in the course of his employment and that it grew out of, or resulted from the employment. Carman v. Haworth, Inc., 74 Ark. App. 55, 45 S.W.3d 408 (2001); Ringier Am. v. Combs, 41 Ark. App. 47, 849 S.W.2d 1 (1993). Further, the claimant must show a causal relationship exists between his condition and his employment. Harris Cattle Co. v. Parker, 256 Ark. 166, 506 S.W.2d 118 (1974).

It is well established that the party having the burden of proof on the issue must establish it by a preponderance of the evidence. Ark. Code Ann. § 11-9-704(c)(2) (Repl. 2002). A preponderance of the credible evidence of record means "evidence of greater convincing force." Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995); See also, Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 206 S.W.2d 42 (1947). In determining whether a claimant has sustained his or her burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. § 11-9-704; Wade v. Mr. C Cavanaugh's, 298 Ark. 363, 768 S.W.2d 521 (1989); and Fowler v. McHenry, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

In my opinion, a review of the evidence demonstrates that the claimant has failed to prove by a preponderance of the evidence that the cracking and snapping he experienced after his work related incident was a compensable consequence of his compensable injury to his left hip. It is clear that the dislocation of the claimant's hip that occurred on April 15, 2006, was not the first dislocation the claimant had suffered. The claimant had several dislocations prior to this time and he was prone to having them no matter what he was doing.

Dislocations had occurred while he was getting up from a sitting position in his vehicle as well as playing softball. Just because this particular dislocation happened at work, does not make the hip replacement surgery he underwent in June of 2006 compensable. The claimant's hip was put back in place after the April 15th incident and he was released from the hospital. At that time, the claimant was restored to the condition he was prior to the April 15th incident. Therefore, while the respondents are clearly liable for this hospitalization, they are not liable for any subsequent surgery, hospitalization or disability benefits. A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. See, Nashville Livestock Commission v. Cox, 302 Ark. 69, 787 S.W.2d 664 (1990); Minor v. Poinsett Lumber & Mfg. Co., 235 Ark. 195, 357 S.W.2d 504 (1962); Conway Convalescent Center v. Murphree, 266 Ark. 985, 588 S.W.2d 462 (Ark.App. 1979); St. Vincent Medical Center v. Brown, 53 Ark. App. 30, 917 S.W.2d 550 (1996). As is commonly stated, the employer takes the employee as he finds him. Murphree, supra. In such cases, the test is not whether the injury causes the condition, but rather the test is

whether the injury aggravates, accelerates, or combines with the condition. However, although a disabling symptom of a pre-existing condition may be compensable if it is brought on by an accident arising out of and in the course of employment, the employee's entitlement to compensation ends when his condition is restored to the condition that existed before the injury unless the injury contributes to the condition by accelerating or combining with the pre-existing condition. See Arkansas Power & Light Co. v. Scroggins, 230 Ark. 936, 328 S.W.2d 97 (1959).

Dr. Mumme's inspection of the cup after the June 2006 surgery indicates that the cup was found to have a deformity due to **recurrent** dislocations. The one dislocation that occurred in April of 2006 was not the cause of the problem. There is absolutely no medical evidence that the hip revision had anything whatsoever to do with the April 15, 2006, incident. Accordingly, I would reverse the decision of the administrative law judge.

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

KAREN H. MCKINNEY, Commissioner