

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F500340

TERRY B. SADLER, EMPLOYEE	CLAIMANT
R.M. COURSON, INC., EMPLOYER	RESPONDENT
AMERISURE MUTUAL INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED AUGUST 8, 2007

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

Claimant represented by HONORABLE KENNETH A. HARPER, Attorney at Law, Monticello, Arkansas.

Respondent represented by HONORABLE JOHN D. DAVIS, 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 December 7, 2006.

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

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed on December 28, 2004 at which time the claimant was earning sufficient wages to be entitled to a compensation rate of \$327.00/\$245.00.

2. The claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable injury, caused by a specific incident, arising out of and in the course of his employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.

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 Hood dissents.

DISSENTING OPINION

The claimant appeals the December 7, 2006, opinion of the Administrative Law Judge. In that decision, the Administrative Law Judge found that the claimant failed to show objective findings which were causally related to a work-related injury. In making this finding, the Administrative Law Judge asserted that the claimant failed

to show any change between an MRI from 2003 and an MRI that was taken after his work-related accident. The Majority now affirms and adopts this decision as their own. However, after a de novo review of the record, I find the Majority fails to properly acknowledge the claimant had an acute injury as shown by the fact that he had bruising of his back immediately after the accident. Likewise, I note that the MRI from after the claimant's accident showed inflammation in his spine, which is evidence of an acute injury. Accordingly, I must respectfully dissent.

The claimant worked as a foreman for the respondent employer. The claimant described that he had been working for the respondents since 1988. The claimant testified that on December 28, 2004, he injured his low back when he was in a motor vehicle accident in which he was rear-ended.

The claimant testified that he was thrown forward upon the impact and that immediately thereafter he suffered from low back pain. He described the pain as follows,

Well, you had a, you know, just a sharp, stinging numbing sensation in my lower

back. Just very shortly after the impact was I guess maybe, you know, you kind of come back to yourself after the jar and you don't realize what has gone on. I was burning in my lower back. Burning, just a sharp pain.

The claimant was treated at the Ashley County Medical Center on the day of the accident. The claimant reported that he had sustained a back injury after being rear-ended. The claimant also disclosed he previously had suffered a back injury and had injections two years before. X-rays were performed and returned as normal. The claimant was specifically noted to have a small bruise on his low back and was diagnosed as having a contusion. The claimant was prescribed Flexeril.

The claimant was treated by Dr. J.D. Rankin on December 30, 2004. Dr. Rankin noted the claimant had tenderness in his lumbar spine. He also noted the claimant had a decreased range of motion in his lumbar spine. Dr. Rankin diagnosed th claimant with a lumbar strain and prescribed medication. On January 13, 2005, Dr. Rankin ordered an MRI.

The diagnostic report from the MRI indicated in part,

No acute fracture or subluxation is identified. There is mild degeneration of the L5-S1 disc which exhibits a tiny left paracentral herniation and annular tear extending posterior to the inferior surface of the L5 vertebra. This is not visualized on the accompanying axial images and its clinical significance is unclear.

The remaining lumbar discs and foramina are within normal limits. However, small amounts of fluid are present in the posterior facets at the L2-3 and L3-4 levels and right facet at the L4-5 level consistent with synovitis. There are no prior studies for comparison.

On January 19, 2005, Dr. Rankin indicated that the claimant's MRI revealed, "posterior fluid synovitis" and "annular tear." Dr. Rankin continued to assess the claimant with a lumbar strain.

On February 8, 2005, Dr. Ronald Williams treated the claimant. Dr. Williams indicated that he had previously performed an anterior cervical fusion on the claimant. Dr. Williams indicated that the claimant had undergone an MRI on March 26, 2003, which indicated the claimant had an

annular tear at L5-S1. Dr. Williams described the claimant had epidural steroid injections and physical therapy at that time which improved, but did not totally resolve the claimant's back pain. Dr. Williams described the claimant had reinjured his back in December 2004 and that the claimant suffered from nonradicular pain which did not go down his leg. Dr. Williams noted the claimant had restricted range of motion in his lumbar spine and indicated the claimant suffered from decreased pinprick sensation in the right S1 distribution. The claimant's straight leg testing was negative. Dr. Williams indicated that the claimant's MRI remained, "essentially unchanged" from the one in 2003. He further indicated that the claimant did not need surgery and instead recommended a lumbar epidural steroid injection and physical therapy.

The claimant continued to receive conservative treatment in the form of injections and physical therapy but remained symptomatic. On July 20, 2005, Dr. Williams indicated that, "about three weeks ago the claimant began having recurrent pain in the right leg that goes as far as

the calf. He has not had any evaluation or treatment for that." The claimant had a positive straight leg test and decreased pinprick sensation in the right S1 distribution. Dr. Williams recommended a repeat MRI.

The respondent carrier would not pay for the MRI and the claimant had to pay for the MRI out of his own pocket. In a letter dated March 9, 2006, Dr. Williams indicated that the claimant's repeat MRI revealed a "ruptured disc" in the claimant's back at level L4-5. Dr. Williams recommended a lumbar myelogram and an EMG and nerve studies. On March 17, 2006, Dr. Williams issued a letter indicating, "Mr. Sadler indicated to me that he never had any difficulty with his back until he injured himself at work on 12/29/2004. If that is the case, then that injury should be considered the need for his current treatment and evaluation...".

At the time of the hearing the claimant testified that he remains symptomatic and that the numbness in his back and leg lasts longer than it previously had. The

claimant further indicated that his symptoms have decreased his functional abilities.

The claimant also testified regarding his prior back injuries. The claimant candidly testified that in 2001 he was in another work-related motor vehicle accident. The medical records indicate that the claimant ultimately herniated a disc in his cervical spine which required fusion. The claimant also sustained a low back injury from the same accident. After having fusion surgery for his cervical spine, the claimant began complaining of low back pain. On March 11, 2003, the claimant was noted to have symptoms which were mainly non-radicular but included some numbness in his right leg. Dr. Williams also specifically noted the claimant's straight leg testing was negative.

The claimant submitted to an MRI which revealed,

The vertebral body heights, disc spaces, and alignment are maintained. The conus appears normal in position without any abnormal signal.

There is small hyperintense signal in the annulus at L5-S1 level.

No focal disc herniation, spinal canal stenosis or neural foraminal narrowing is seen.

IMPRESSION: TINY HYPERINTENSE ANNULAR TEAR AT L5-S1 LEVEL. THE EXAM IS OTHERWISE UNREMARKABLE.

Notably, On April 28, 2003, the claimant went to the emergency room. At that time Dr. Williams prescribed the claimant six weeks of physical therapy. He diagnosed the claimant with low back pain. However, Dr. Williams did not in any way indicate the claimant had herniations in his lumbar spine.

The physical therapist's notes indicate that the claimant last received physical therapy on June 6, 2003. At that time the claimant reported ongoing pain in his low back. However, the claimant reported that he did not have numbness. Finally, the claimant reported that his symptoms had improved.

The claimant contends that he sustained a compensable injury to his lumbar spine. At the time of the hearing, the parties agreed to litigate the issues of compensability and the claimant's entitlement to medical

benefits. The Majority denies the claim on the basis that the claimant had objective findings but could not show that his condition was causally related to his work related accident. Specifically, they find that there was no change in the claimant's objective medical condition from the 2003 MRI and the MRI performed in January 2005.

After reviewing the record, I find that the Majority has erred in their assertions. First, I note that regardless of whether the claimant sustained a permanent condition or disc injury due to his 2004 accident, it is clear that he sustained a compensable injury to at least some extent. The claimant presented with bruising immediately after the accident, illustrating that he sustained an acute injury in the 2004 accident. Certainly, the fact that the claimant had bruising which was to his lower spine and observed by medical personnel would be enough to show that he sustained a compensable injury. However, I also find that the claimant did not merely sustain a contusion to his back. Rather, I find that the

claimant's disc herniation at L4-5 is directly related to the work injury in 2004.

The medical records clearly show the claimant has met his burden of proof in showing a compensable injury. The diagnostic tests also show the claimant sustained an acute injury to his back. In my opinion, the claimant's MRIs show that he sustained a compensable injury. Specifically, I note that the claimant's January 2005 MRI revealed synovitis and a herniation in the claimant's lumbar spine. In contrast, the MRI from 2003 did not. Furthermore, while the claimant's third MRI revealed more serious findings, the claimant testified that he was not working during that period of time. Likewise, there is no evidence the claimant sustained a new injury during that period of time. Furthermore, the respondents have provided absolutely no evidence that an independent intervening cause exists in order to cut off their liability. Accordingly, I would have reversed the Administrative Law Judge's decision and awarded the requested medical benefits.

As the claimant, appellee had the burden of proving her compensable injury by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4) (E) (I) (Repl. 2002). A "compensable injury" is one "arising out of and in the course of employment." Ark. Code Ann. § 11-9-102(4) (A) (i) (Repl. 2002). Ark. Code Ann. § 11-9-102(4) (D) provides, "[a] compensable injury must be established by medical evidence supported by "objective findings" as defined in subdivision (16) of this section." "Objective findings" are "those findings which cannot come under the voluntary control fo the patient." Ark. Code Ann. § 11-9-102(16); Carman v. Haworth, Inc. 74 Ark. App. 55, 45 S.W.2d 408 (2001). In order to prove a compensable injury, the claimant must prove, among other things, a causal relationship between his employment and the injury. Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002). However, medical evidence is not required to prove that the cause of an injury was work-related. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999). The requirement that a compensable injury be

established by medical evidence supported by objective medical findings applies only to the existence and extent of the injury. Cross v. Magnolia Hosp. Reciprocal Group, 82 Ark. App. 406, 109 S.W.3d 1435 (2003); Stephens Truck Lines v. Millican, 58 Ark. App. 275, 950 S.W.2d 472 (1997).

In this instance, the Majority's reason for denying the claim seems to be largely based on the finding that there was no change in the claimant's MRI from 2003 and the MRI taken in January 2005. In supporting this argument, the Majority and the respondents note that Dr. Williams indicated that the results of the MRI were essentially unchanged. However, after reviewing the record, I find that the findings of the Majority are patently wrong.

The Majority first errs in arbitrarily disregarding the medical evidence showing the claimant sustained at least a strain and contusion to his low back. The evidence of the claimant's injury was present immediately after the injury and was noted in the medical records. The first evidence of the claimant's injury is seen by the emergency room report. When at the emergency room,

the claimant reported low back pain due to being in a motor vehicle accident. The claimant was specifically noted to have a bruise immediately after the accident. The notes provide the claimant suffered a "small bruise" in the lumbar region of his lower left back. Certainly, this bruise, which was observed and documented by medical personnel would be consistent with an acute injury and would be consistent with the inflammation and swelling as shown by the claimant's January 2005 MRI.

I further find that a comparison of the claimant's 2003 and 2005 MRIs further show evidence of an acute injury. The claimant's MRI from 2003 indicated the claimant suffered from a, "TINY HYPERINTENSE ANNULAR TEAR AT L5-S1 LEVEL. THE EXAM IS OTHERWISE UNREMARKABLE." Yet, in January 2005, the claimant's MRI report specifically indicated that the claimant still had an annular tear at L5-S1; however, this time it was not described as "tiny". Instead it was noted to extend from the posterior to the inferior of the L5 vertebra. Notably, the claimant also suffered from mild degenerative changes and a herniation at the same level.

Likewise and perhaps more importantly, the claimant was specifically noted to have fluid throughout the lumbar spine. Specifically, the report indicated, "... small amounts of fluid are present in the posterior facets at the L2-3 and L3-4 levels and right facet at the L4-5 level consistent with synovitis... ". Clearly, the existence of a herniation at L5-S1 would constitute a change in the claimant's condition. Furthermore, the synovitis in the claimant's lumbar spine would show an objective change in the claimant's condition. _____

Dorland's Illustrated Medical Dictionary, 27th Ed. (1987), defines synovitis as, "inflammation of a synovial membrane. It is usually painful, particularly on motion, and is characterized by a fluctuating swelling due to effusion within a synovial sac." In this instance, the 2003 diagnostic report from the claimant's MRI specifically indicates that the only abnormal finding was the claimant's annular tear. Yet, in January 2005, the report indicates the claimant had fluid present that was consistent with synovitis. Later, on January 19, 2005, Dr. Rankin also

specifically indicated the claimant's MRI revealed "posterior fluid synovitis". Given the fact that the claimant's 2003 report did not indicate the claimant had synovitis, whereas the 2005 report did, and Dr. Rankin specifically noted the synovitis in 2005, whereas he had previously not mentioned it, I find that the only logical conclusion is that the claimant's condition had changed. Though the respondents argue that these would simply be degenerative changes, there is simply no evidence to support such an assertion. Furthermore, when considering the nature of the claimant's injury and the fact that he was observed with bruising, it is only logical that he would also have swelling due to his injury.

In my opinion, to find that the claimant's inflammation and bruising were not objective findings which were related to the accident is contrary to the law on this issue. I find the present case to be 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 in the present case was diagnosed with a contusion and later diagnostic studies showed swelling in the same area. In the present case, the facts supporting compensability are even more clear than in Meister. The claimant in the present case was specifically noted to have bruising in his lumbar spine. When reviewing the medical records from the emergency room, there is simply no way to logically conclude that medical personnel did not physically observe the bruises. Furthermore, when considering the findings of the MRI, which showed swelling and synovitis, it is even more evident that the claimant's injury is compensable.

I further find that the objective findings of the claimant's bruising and the MRI from January 2005, show a more lasting injury was sustained in the work related injury from 2004. As the claimant had bruising and inflammation of the lumbar spine, remained symptomatic, and did not sustain further injury after being rear-ended in December 2004, I find that the claimant has shown that he sustained more than

a simple contusion and that he is entitled to treatment for that condition.

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).

The respondents place great reliance on Dr. Williams' opinion that the claimant's MRI was unchanged. However, I find that Dr. Williams' opinions on causation are entitled to little weight to either party. I make this finding because it is apparent that Dr. Williams' reports seem to be inconsistent and are largely of little value in determining the issue of causation. Accordingly, I find that the best available evidence for determining causation would be the reports from the diagnostic studies themselves and from the reports of Dr. Rankin.

Specifically, I find that Dr. Williams opinion is entitled to little weight, particularly given the fact that there were no notations of inflammation or bruising prior to 2005. When considered in conjunction with the claimant's diagnostic testing in 2005, the opinion of Dr. Williams simply does not seem consistent with the reports from the MRIs themselves or even with his own notes. In particular, I note that in March 2006, Dr. Williams drafted a letter indicating the claimant had reported never suffered from problems with his low back prior to his work injury in 2004.

This is simply not consistent with the other medical records. The claimant was treated in 2001 for his neck injury. He also complained of low back problems, for which Dr. Williams was the treating physician. Furthermore, the claimant consistently reported his old problems to Dr. Williams and such is evident when reviewing the record. As such, I am simply baffled by Dr. Williams' assertion that the claimant did not report his old injury to him. Furthermore, I find that it greatly diminishes the credibility to which Dr. Williams' opinion should be given in any respect. Therefore, I specifically reject Dr. Williams conclusion that the claimant's MRI remained unchanged, particularly when reviewing the language of the diagnostic studies themselves. Furthermore, as Dr. Rankin's reports specifically note synovitis after the accident, but not before, I find that it is apparent that the claimant had a change in condition.

The Majority also opines that the claimant fails to show a causal connection because his herniation was shown to be at L4-L5; whereas the tear was at L5-S1. However, the

claimant is not contending that the pre-existing tear caused his condition. Rather, the claimant is arguing that he sustained a new injury at L4-5 as a result of the 2004 accident. As previously discussed, the claimant had synovitis throughout his lumbar spine and at L4-L5. He also presented with bruising, and was prescribed physical therapy and Flexeril. The claimant's objective findings and need for treatment did not exist until after his 2004 work-related accident. Furthermore, the claimant was off work after that time period and there is no evidence that he was involved in any accident after that time period. Rather, the claimant consistently and continually complained of low back pain, which progressed to the point that he began experiencing numbness in his right leg. Only at that point did Dr. Rankin order another MRI. Not surprisingly, that MRI showed a "ruptured disc."

The respondents and the Majority essentially argue that the claimant's "ruptured disc" was a new finding and that too much time lapsed to show a causal connection. However, since the claimant continued to receive treatment

during the entire time period and there is absolutely no evidence that he sustained a subsequent injury, it stands to reason that the claimant's defect was directly related to his compensable injury from December 2004. In fact, to make such a finding, is, in my opinion, tantamount to impermissible conjecture and speculation.

In sum, I find that the claimant has met his burden of proof in showing he sustained a compensable injury. The claimant was involved in an accident and presented with low back pain immediately thereafter. There is no dispute that the accident occurred and upon first treatment the claimant was noted to have bruising to his lumbar spine. The injury was further corroborated by the inflammation showed in his January 2005 MRI, and then again, by his later MRI, which showed he had another herniated disc. While the claimant admittedly had pre-existing back problems, the overwhelming weight of the evidence shows that he did not have a herniated disc at L4-5 until after the 2004 accident. Likewise, the claimant remained symptomatic after the 2004 accident and there is no evidence he

sustained another injury so as to constitute an independent intervening cause and cut off the respondents' liability. Accordingly, I would have reversed the decision of the Administrative Law Judge and awarded medical benefits.

For the aforementioned reasons, I respectfully dissent.

PHILIP A. HOOD, Commissioner