

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F602275

TRAVIS SLAUGHTER,
EMPLOYEE

CLAIMANT

POLYTECH MOLDING, INC.,
EMPLOYER

RESPONDENT

GUARANTEE INSURANCE CO.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 16, 2007

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

Claimant represented by the HONORABLE STEPHANI
JUNGMEYER, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE JOHN DAVIS,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed November 8, 2006. 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 February 16, 2006, the relationship of
employee-employer-carrier existed between the
parties.
3. The claimant is entitled to a weekly
compensation rate for temporary total
disability in the amount of \$142.00.

4. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable low back injury on February 16, 2006, while working for the respondent.

5. The respondents should pay for the initial visit at Washington Regional Medical Center following the claimant's fall at work on February 16, 2006.

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.

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.

Therefore we affirm and adopt the November 8, 2006 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

I must respectfully dissent from the Majority opinion finding that the claimant did not show he sustained a compensable injury as shown by objective findings and finding that the respondents are only responsible for payment of treatment performed on February 16, 2006. After a de novo review of the record, I find that the claimant provided credible testimony regarding the occurrence of his injury. Furthermore, the existence of the claimant's injury is shown by the objective medical records. Finally, the respondents initially accepted the claim as compensable, thereby causing the claimant to incur medical expenses

for which the respondents should be estopped from denying liability. Accordingly, I must respectfully dissent.

The Administrative Law Judge issued a decision on November 8, 2006, finding that the claimant failed to show he sustained a compensable injury as shown by objective findings. The Majority now affirms and adopts this decision as their own. However, I find that the medical evidence, in conjunction with the claimant's testimony, show the claimant sustained a compensable injury. Specifically, I find that the claimant has shown objective signs of his injury as shown by the diagnosis of a contusion with a strain and by the prescription of muscle relaxers. Though it is apparent that the true nature of the claimant's injury is unknown because the respondents will not allow him to see a neurologist, I find that even without the opinion of a neurologist, the claimant has met his burden of proof.

In order to prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: (1) an injury arising out of and in the course of employment; (2) that the injury caused internal or external harm to

the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the injury; and (4) that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102(4) (A) (i) (Repl. 2002).

Objective findings are defined as findings that cannot come under the voluntary control of the patient. Continental Express, Inc. v. Freeman, 66 Ark. App. 102, 989 S.W.2d 538 (1999). The Supreme Court of Arkansas has held that prescribing medication in order to treat muscle spasms is sufficient to establish the existence of objective findings. Estridge v. Waste Management, 343 Ark. 276, 33 S.W.3d 167 (2000), See also, Fred's, Inc. v. Deborah Jefferson, 361 Ark. 258, 206 S.W.3d 238 (2005).

In this instance, the claimant has met his burden of proof in showing he sustained a compensable injury. The claimant credibly testified that while he had sustained numerous other injuries in the past, he had never injured his low back. There is no evidence to the contrary, nor is there any evidence to indicate that the claimant is not credible.

When considering the claimant's credibility, the promptness with which he sought medical attention, and the medical records from after the accident, I find that the claimant has shown that he sustained a compensable injury. The claimant credibly testified that he injured himself when he slipped and fell at work. The claimant reported an acute onset of symptoms immediately after falling. The claimant went to the doctor almost immediately thereafter. The claimant was treated on February 16, 2006. He reported low back pain and numbness in his leg. The claimant was diagnosed with, "Low back pain with contusion and strain." A contusion is more commonly referred to as a bruise. Certainly a bruise is objective and not something that the claimant would be able to voluntarily control.

Furthermore, the claimant testified that he was prescribed muscle relaxers by Dr. Blankers. The medical evidence supports this claim. The claimant initially presented for treatment with Dr. Blankers on February 20, 2006. From that point on, Dr. Blankers prescribed the claimant with Percocet, Celebrex, and Valium. As Valium is a medication that is known to be used for relieving muscle spasms, and the claimant testified that Dr. Blankers prescribed muscle relaxers,

it is apparent the Valium was prescribed by Dr. Blankers as a muscle relaxant. As previously noted, the courts have previously indicated that when medication is used for the purpose of relieving muscle spasms, that is sufficient to show an objective injury. Accordingly, when considering the original diagnosis of a contusion and the use of prescription muscle relaxers, I find that the claimant sustained a compensable injury to his low back.

Furthermore, I note the credible testimony of the claimant that he had never suffered from low back problems, and the absence of any evidence to the contrary. In particular, I note that the claimant presented with left leg numbness, which would be consistent with having a low back injury. Notably, the emergency room and the diagnosis of Dr. Blankers are consistent in that both assessed the claimant with a strain and suggested further treatment. While the claimant has received a CT scan and an MRI which both show degenerative changes, Dr. Blankers and the physical therapist have both indicated the claimant needs to see a neurologist. Given the obvious legitimacy of the claimant's symptoms and complaints, in conjunction with his diagnosis and need for prescription muscle relaxers,

and the mechanics of how the claimant's injury occurred, I find that the Majority errs in finding the claimant did not sustain a compensable injury and that he is not entitled to medical benefits.

I further find that the claimant is entitled to the requested temporary total disability benefits. Temporary total disability for unscheduled injuries is that period within the healing period in which claimant suffers a total incapacity to earn wages. Ark. State Highway & Transportation Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

While there is an obvious dispute regarding whether Dr. Blankers released the claimant to light-duty work, it is apparent that Dr. Blankers initially believed the claimant needed to be off work. It was only after Dr. Blankers was contacted by the respondents and pressured into allowing the claimant to return to work that Dr. Blankers agreed to allow the claimant to return to work. Though the respondents would assert that the claimant had repeatedly gone to the worksite

indicating he was able to return to work, only to change his mind once work was offered, I simply do not find that explanation to be credible. It simply makes no sense for the claimant to take such action, much less to make such representations on multiple occasions. I find this to be particularly true in light of the fact that the only reason the claimant would have to contact the respondents would be to provide them with doctor's notes. Furthermore, I find this to be true in light of the claimant's anger and conduct after the respondents contacted Dr. Blankers. Notably, after the respondents called Dr. Blankers, the claimant contacted Dr. Blankers and expressed a legitimate concern over why Dr. Blankers would change his mind regarding his ability to work. The claimant also asked what would happen if he returned to work when he was not ready. In my opinion, the claimant would not have taken such action unless he was aware he was unable to work. Furthermore, he would not have been so surprised and upset if he had been constantly in contact with the respondents and telling them he could return to work.

Furthermore, I find that the weight of the evidence shows the claimant could not return to work. Dr. Blankers originally believed the claimant could not

return to work. Additionally, after the claimant discussed the situation with Dr. Blankers, he reasserted his opinion that the claimant could not return to work. Additionally, the claimant's symptoms are that of numbness in his leg. It is also undisputed that the claimant remained on medication, including Percocet. Certainly, given the claimant's symptoms, his ongoing use of medication, and Dr. Blankers' opinion that the claimant did not need to work and recommendation for additional treatment, it is apparent that the claimant remained in his healing period and was unable to work.

I further find that the Majority errs in denying the claimant medical benefits beyond his initial date of treatment. Specifically, I find that even if this case is ultimately not compensable, the respondents are estopped from denying the claimant treatment up to the time at which the neurologist was recommended. The Court of Appeals set forth the requirements for estoppel in Southern Hospitalities v. Britain, 54 Ark. App. 318, 925 S.W.2d 81. (1996). The Court opined,

In Snow v. Alcoa, 15 Ark. App. 205, 691 S.W.2d 194 (1985), we set out the elements of estoppel as follows:

- 1) The party to be estopped must know the facts; 2) he or she must

intend that his or her conduct shall be acted upon or must act so that the party asserting the estoppel has a right to believe the other party so intended; 3) the party asserting the estoppel must be ignorant of the true facts; and 4) the party asserting the estoppel must rely on the other party's conduct to his or her injury.
Id.

In this instance, the claimant has met the four requirements set forth by the Court. The claimant received treatment at the direction of the respondents. While it is unclear exactly what medical treatment was paid for by the respondents, it is clear that until the referral for a neurologist was made, the claimant was led to believe that his medical treatment would be paid for and that his injury was being treated as compensable. Specifically, I note that the claimant received temporary total disability benefits up to March 28, 2006, which indicates the claimant's injury was initially treated as being compensable. It is also evident that the claimant's medical treatment was directed by the instruction of the respondents. The claimant testified that after he was treated at the hospital, he was referred to Dr. Blankers. He said that

the respondent employer referred him to Dr. Blankers and there is no evidence to dispute this testimony. The claimant also received physical therapy at the referral of Dr. Blankers. The claimant further said that he would take his doctor's releases to the respondents, indicating that they were aware he was still seeking treatment from Dr. Blankers and the therapist to which he referred the claimant.

Furthermore, when reviewing the doctor's notes, it becomes even more apparent that the claimant's treatment was being directed by the respondents. The notes from Dr. Blankers indicate that the request for an MRI was initially denied. At the top of a note dated February 28, 2006, Crystal, who is identified as being with the insurance carrier of workers compensation is listed in the area provided for the parent's name. The note also indicates, "MRI won't be covered unless he has + foot drop or loss of reflexes. Must do "a few weeks" of PT 1st". Another noted dated March 13, 2006, indicates that "workers comp" cancelled the claimant's MRI. Yet, another note from the following day indicates Dr. Blankers drafted another prescription for the MRI. It was sent to "Crystal". Additionally, the bill from the facility performing the MRI indicates that the

claimant's procedure was to be treated as a workers' compensation case. Given Dr. Blankers ongoing contact with the respondent insurance carrier, and the fact that the claimant did not receive treatment until receiving approval, it is apparent that the respondents were in complete control of the claimant's treatment and that he believed they would pay for it.

Given the fact that the claimant's claim was initially accepted as compensable and at the time of treatment he was still receiving temporary total disability benefits, the fact that the claimant was sent by the respondents to these particular medical providers, and the fact that the claimant was led to believe his treatment was "approved" and therefore being paid for by the respondents, I find that the respondents should have been estopped from denying responsibility for the cost of treatment up to the time the referral to the neurologist was denied.

Finally, I address the respondents' argument that because the claimant allegedly failed to raise an estoppel argument, it would be an error for the Commission to consider the issue on appeal. While certainly it is true that in the past the Commission has failed to consider the issue of estoppel unless raised

at the hearing before the Administrative Law Judge, I find that in this instance, the issue was raised in advance of the hearing. The Prehearing Order indicates that the claimant was contending he sustained an injury while in the course and scope of employment. It further provides, "He requests payment of outstanding medical bills related to his injury, temporary total disability benefits . . .". Though this language does not explicitly indicate the claimant was relying on an estoppel theory, I find that his request of payment for outstanding medical bills provided adequate notice of his intent to pursue the theory of estoppel.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner