

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F503671

SHELIA SWINDLE,
EMPLOYEE

CLAIMANT

LIBERTY BANK OF ARKANSAS,
EMPLOYER

RESPONDENT

ROYAL & SUN ALLIANCE INSURANCE CO.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED MAY 7, 2007

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

Claimant appears pro se.

Respondents represented by the HONORABLE ANDREW M. IVEY,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed August 8, 2006. The administrative law judge
found that the claimant sustained an injury arising out of
and in the course of her employment. 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 injury.

I. HISTORY

Shelia Fay Swindle, age 34, testified at deposition that she had never before suffered from seizures. According to the record, however, Ms. Swindle was diagnosed as having "seizure - etiology unknown" and headache in February 1991.

A CT of the claimant's cervical spine was taken in May 1994, with the following conclusion: "1. Congenital lack of fusion of C1 anteriorly. 2. Congenital fusion of C2 and C3. No other findings."

During an pregnancy-related examination of the claimant in July 1994, a physician noted "a history of some neck trauma which causes some motor seizurelike activity. It is uncertain whether this is jacksonian type activity in these muscles or spasms. These appear to be previously treated well by chiropractic and muscle relaxants, therefore, I think it is more of a local muscle spasm."

In February 1998, the claimant sought emergency treatment for head and neck pain after a syncopal episode at work. An "Abnormal ECG" was noted in February 1998.

The claimant was treated for depression in February and March 1999.

A physician's impression in April 1999 was cervical and lumbar strain and myofascial pain.

A physician's examining impression in September 1999 was "Seizure activity most likely secondary to hypoxia - other etiologies cannot be ruled out at this point."

A physician noted in March 2000, "Ms. Swindle is a 26 year old white female with a prior diagnosis of Mood Disorder, Secondary to Head Injury."

Dr. John Wilson assessed the following in November 2000: "1. Hypertension. 2. Headaches. 3. Status post fractured neck now with neurological symptoms. 4. Chest pain."

Dr. Wilson noted in October 2001, "Sheila says that three days ago she hit her head while standing up on a weight bar. Her friends said she had a loss of consciousness for 10 or 15 minutes." Dr. Wilson assessed, "1. Post concussion syndrome. 2. Nosebleeds."

The record indicates that the claimant underwent an arthroscopy to the left knee in July 2002.

An EEG study of the claimant was done in September 2002: "This is a 30 year old white female with a single episode one week ago while at work where a co-worker states she passed out with seizure activity and they called 911....This EEG showed no evidence of focal slowing,

paroxysms or spike and wave discharges of any significance to suspect any focal or generalized seizure disorder.”

An MRI of the claimant’s brain was taken in September 2002: “Unremarkable MRI brain study. No areas of abnormal signal intensity identified within the brain parenchyma to indicate underlying disease.”

The claimant was diagnosed as having musculoskeletal chest pain and headache in July 2003.

The claimant’s (deposition) testimony indicated that she was working in the bank’s drive-through window on May 3, 2004. The claimant testified that a customer, Linda Bridges, became upset because the bank could not immediately cash Ms. Bridges’ SSI check. The parties stipulated that the employment relationship existed on May 4, 2004. The claimant testified that she was in the bank lobby “and all of a sudden I felt an arm go around my neck and all of a sudden [Linda Bridges] was choking me. I mean, choking me good. And she was screaming, well I got my money now, you’re not taking it away from me now....And when she finally let me go, I started, I was coughing, and just, I couldn’t catch my breath....I said, I’m feeling lightheaded, I just feel really bad and all of a sudden, that’s, that’s the last thing I remember....I hit the desk and went down.”

Amy Tribble testified for the respondents that she was working on the date of the alleged accidental injury:

Q. What do you recall in your own words happened that day around lunch time?

A. Sheila came in and some other girls had just come back from lunch. And they came in and the customer that had been in the bank prior, and Sheila had talked with her in the drive thru. And the lady come up behind her and, you know, grabbed her around the neck, put her arm around her neck in a playful manner ...

Q. How do you know it was in a playful manner?

A. She was just joking with her. They were laughing.

Q. And this customer, is it Linda Bridges? Is that correct?

A. I believe so.

Q. Did she scream at Ms. Swindle?

A. No....

Q. And then what happened?

A. Sheila went back behind the teller line and clocked in. And she said she wasn't feeling well. So she sat down....

Q. And when you said she grabbed her from behind, was this put in a headlock?

A. No....

Q. Did you witness Ms. Swindle fall or lose consciousness?

A. No. I left for lunch.

Q. So you weren't present at the time of the alleged seizure? Is that correct?

A. No....

Q. You didn't hear a raised voice?

A. No. There wasn't a scene, no.

Angela Castleman, a teller supervisor, testified for the respondents:

Q. What do you recall, in your own words, happened that day around lunchtime? Just go ahead and give as much detail as you want about the incident that we're here to discuss today.

A. I was working at the first teller window when you come in the door....And when they came in, Sheila headed for the teller line and then another lady in the lobby had said something to her so she turned her back to the teller line and I finished with my customer and she turned around and said something, I don't remember exactly the words and kind of laughingly put her arm around her shoulder, neck and then Sheila come back behind the teller line to her station. I'm not for sure exactly how long later, five, 10 minutes, she said she didn't feel good....

Q. She, you said she grabbed her from behind. Was this in a headlock?

A. No....

Q. Was the customer screaming at Ms. Swindle?

A. No.

Q. Did she call attention, I mean, was there a scene drawn or something?

A. No. Nobody in the bank even knew later on what was going on....

Q. Did you witness her fall or lose consciousness?

A. She was sitting at the desk and I was waiting on a customer and I heard Mona say her name and I turned around and she was kind of sliding out the chair she was sitting in and Mona was catching her and lowering her to the floor....

An Emergency Physician Record dated May 4, 2004 showed a chief complaint of seizure and "hx of seizure disorder." There was a "single episode" and "multiple episodes #2" which had occurred "just prior to arrival." A mostly illegible handwritten notation on the Record appeared to indicate that the claimant's neck had been grabbed. The claimant complained of headache and "headlock at work by customer." The Physical Examination part of the Record appeared to show an abrasion to the claimant's right shoulder, and that the claimant's left knee was hurting. The claimant appears to have been prescribed medication and was released.

An MRI of the claimant's brain and pituitary gland was done on May 5, 2004: "This is a 31 year old female who was involved in an assault, choking incident 5-4-04. She had a possible seizure prior to the ER visit. She has hyperprolactinemia. She has headaches. She struck her head on

the concrete when she had a syncopal episode." The Opinion was "1. Normal study."

Dr. Demetrius Spanos examined the claimant on or about May 26, 2004:

The patient is a 31-year-old right-handed female with a past medical history significant for hypertension and depression who was at work as a bank teller when a customer apparently became upset with her and placed the patient in a "head lock." The patient subsequently lost consciousness and as she fell she struck her head. She indicates that the head strike was on the right occipital area and apparently immediately after this head injury she suffered a convulsion. She was transported by ambulance to Arkansas Methodist Hospital and while enroute she had two more seizures. Her seizures were confirmed by elevated prolactin levels that were drawn in the emergency room....

Of note is that this past weekend the patient has had approximately five more seizures. Her Dilantin level was apparently low and she has been asked to increase her regimen to 5 tablets per day. She has found that this makes her sedated and incapable of working as a bank teller as effectively as before....

Given that the patient's prolactin levels were elevated there is no question that she suffered a seizure. This seems to have been related to her head injury; however, given that her mother has a history of seizure disorder I wonder if the patient has had a potential for seizure brought on by the customer's actions. In other words, had the customer not put her through the events described above she would have gone through her life without any seizures.

Be that as it may the patient has had at least three confirmed seizures and I have recommended

that she continue to take antiepileptic medication. We will obtain an EEG later today but because she has been affected by Dilantin I will begin Tegretol as above and eventually begin a slow reduction of her Dilantin regimen depending on what her most recent Dilantin level indicates....

I did not help matters today by informing her that she is not able to drive until she is seizure free for twelve months.

Dr. Spanos' impression was "Seizure."

An EEG was taken on May 26, 2004, with the Conclusion, "Generalized sharply contoured abnormal activity is noted during this EEG recording. Although this does not confirm seizure disorder it raises suspicions given the patient's natural history. No focal abnormalities are seen to help locate the patient's epileptogenic focus." The Impression was, "Abnormal EEG recording."

Dr. Spanos gave the following impression in July 2004: "1. Generalized convulsive seizures. 2. Headache." Dr. Spanos stated that the claimant's seizures appeared "to be well controlled," and he recommended an adjustment in medication.

A doctor's opinion following a CT of the brain in August 2004 was "Normal study, non-contrast."

The claimant continued to follow up with Dr. Spanos for complaints of seizures. Dr. Spanos' impression in August

2004 was "1. Generalized convulsive seizures. 2. Headache."

Dr. Spanos signed the following work excuse on August 19, 2004: "Shelia Swindle is a patient of our clinic. Please excuse from work for the following dates: Thurs. 8-19-04 through Tues. 8-31-04 due to medication changes. Patient will return to work on Wed, 9-01-04."

The claimant testified that she did not work for the respondent-employer after September 2004: "Doctor Spanos took me off work. Because I, the seizures were just getting too, too much for me, to be able to work. And, I was, the medication was too strong, I just, I just couldn't work anymore....I've been at home since."

Dr. Spanos wrote to counsel for the respondents on September 19, 2005:

As you indicate the patient's history of present illness in the consultation is obtained solely from her description of events and not from any other investigation. We require accuracy in the description of events. The description given to me by Ms. Swindle was considerably more violent than the description given in your letter which states the patient was "merely grabbed from behind in a playful manner." If indeed the claims made in your letter are accurate I would say that seizure disorder was unrelated to the work related accident described by the patient. Again, this depends on the validity of exactly what happened. If the patient was placed in a "headlock" manner that she described to me and then lost

consciousness, falling and striking her head, she could certainly suffer from seizure disorder. If, however, your description of events is accurate then it is unlikely that a seizure disorder would ensue.

Also of note is that the patient had presented to St. Bernard's Hospital in September of 2002 with another episode of seizure-like activity. Specifically, on my history of present illness I had asked the patient if she had ever had any previous history of seizures and she denied this.

The record contains a Pre-Hearing Order and Hearing Notice Filed October 11, 2005, Rescheduled April 18, 2006. The claimant contended that she sustained a compensable injury on May 4, 2004, "when attacked and assaulted by a bank customer and hit her head on a desk as she was falling and then hit her head against the floor causing epileptic convulsions and seizure activity. Claimant further claims that she has been totally disabled since this work injury and is entitled to total temporary disability benefits from the time of the injury to the present time and for as long as she remains in her present condition. Thereafter when and if she is released to return to work, with or without restrictions or limitations, the claimant claims entitlement to permanent total disability benefits or permanent partial disability benefits, wage loss and rehabilitation if appropriate, payment of all related medical expenses,

mileage, and attorney fees, and all other appropriate benefits."

The respondents contended that the claimant could not prove she sustained a compensable injury on May 4, 2004. The respondents contended that the claimant "has a pre-existing seizure disorder condition resulting in periodic seizures and seizure-like activity, that the Claimant was not assaulted in the manner which she described in her pre-hearing response, and that the Claimant cannot establish that her work activities in any way aggravated her pre-existing seizure disorder."

The administrative law judge found, among other things, that the claimant "sustained an injury arising out of and in the course of her employment" on May 4, 2004. The respondents appeal to the Full Commission.

II. ADJUDICATION

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

(i) 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). 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 Full Commission finds that the claimant did not prove she sustained a compensable injury on May 4, 2004. The Full Commission first finds that the claimant was not a credible witness. The claimant testified that she did not have a prior history of seizures. According to the record, however, the claimant had a long history of seizure disorders beginning no later than February 1991. The claimant testified that a bank customer grabbed her, began screaming, and choked her on May 4, 2004. The claimant testified that she was choked with such force that she was unable to breathe. Amy Tribble and Angela Castleman both credibly disputed the claimant's account of events. Both of these witnesses testified that the claimant was grabbed "in a playful manner," and that there was not an incident involving a screaming customer choking the claimant.

Nevertheless, the question before the Commission is not whether the claimant was "choked" as part of an assault or whether the claimant was playfully "grabbed." The Full Commission must decide, based on the evidence before us, whether the claimant sustained a compensable injury on May 4, 2004. In that regard, the record before us does not demonstrate a causal connection between the claimant's complaint of seizure and the alleged accident of May 4, 2004. The Emergency Physician Record of May 4, 2004 indicated that the claimant began suffering from seizures "just prior to arrival" at the hospital. The evidence does not show that these seizures were in any way the result of the alleged incident involving the bank customer. We recognize that an abrasion to the claimant's right shoulder was noted on May 4, 2004. Nevertheless, the claimant does not contend that she sustained a shoulder injury. Further, there is no evidence of record showing that the shoulder abrasion caused the claimant's seizures.

Nor does the record show that the claimant suffered a head injury. There was no notation in the emergency room report of an injury to the claimant's head. An MRI of the claimant's brain on May 5, 2004 was normal. Nor does the record support the claimant's testimony that she was placed

in a "headlock" by an irate bank customer. The Full Commission recognizes that an EEG on May 26, 2004 showed an "abnormal EEG recording." The record does not establish a causal connection between this abnormal EEG and the alleged incident at work.

Finally, the Full Commission notes the letter of Dr. Spanos in September 2005. Dr. Spanos informed the respondents, "The description given to me by Ms. Swindle was considerably more violent than the description given in your letter which states the patient was 'merely grabbed from behind in a playful manner.' If indeed the claims made in your letter are accurate I would say that seizure disorder was unrelated to the work related accident described by the patient. Again, this depends on the validity of exactly what happened. If the patient was placed in a 'headlock' manner that she described to me and then lost consciousness, falling and striking her head, she could certainly suffer from seizure disorder. If, however, your description of events is accurate then it is unlikely that a seizure disorder would ensue."

The determination of witnesses' credibility and the weight to be given their testimony are matters exclusively within the province of the Commission. *Freeman v. Con-Agra*

Frozen Foods, 70 Ark. App. 306, 19 S.W.3d 43 (2000). The findings of the administrative law judge on issues of credibility are not binding on the Full Commission. *Roberts v. Leo Levi Hospital*, 8 Ark. App. 184, 649 S.W.2d 402 (1983). In the present matter, the Full Commission finds that the testimony of Ms. Tribble and Ms. Castleman was entitled to greater weight than the testimony of the claimant. Nor does the probative evidence of record corroborate the claimant's testimony that she was violently placed in a headlock and choked on May 4, 2004. We therefore place significant weight on Dr. Spanos' opinion in September 2005 that the claimant's seizure disorder was not likely to arise from the alleged incident at work.

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 on May 4, 2004. The Full Commission finds that the claimant's reported seizure on that date did not arise out of or in the course of the claimant's employment with the respondents. In addition, the claimant did not prove that she sustained a seizure disorder as the result of the alleged specific incident of May 4, 2004. We therefore reverse the opinion of the

administrative law judge, and this claim is denied and dismissed.

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 sustain a compensable injury on May 4, 2004. My review of the record shows that while the claimant had experienced seizure-like episodes prior to the incident in question, she was not diagnosed with a seizure disorder until after being grabbed by a customer. However, after the incident, the claimant was noted to have increased prolactin levels and an abnormal EEG reading. In my opinion, these objective findings show a change in the claimant's condition. Furthermore, as the claimant's seizure occurred almost immediately after the confrontation with Bridges, the claimant's change in

condition was directly caused by Bridges' assault on her.

_____The Majority denies the claim on the basis that the claimant is allegedly not credible. In supporting this finding they find that the claimant was not credible with regard to her alleged past seizures, the events surrounding her injury at work, and her failure to disclose her prior alleged seizures to Dr. Spanos. However, after reviewing the record, I found the claimant to be credible with respect to her past condition and to the incident in question.

In making this finding, I note that while the claimant had past seizure-like activity, prior to this incident she had never been diagnosed with seizures. There is no dispute that the claimant had suffered an injury to her neck as a small child and then later at least two car accidents where she suffered blows to the head. Likewise, it is not disputed that prior to the compensable injury, the claimant would have episodes that were similar to seizures and were often suspected to be such by medical personnel.

However, the claimant, her husband, and her sister all credibly testified that the claimant's

seizures after the work incident were different than the episodes she experienced beforehand. In fact, the medical records and the claimant's testimony reflect that she had repeatedly been tested for various seizure disorders but her diagnostic tests always came back negative. Yet, after the work-related incident the claimant's EEG returned as abnormal and she was discovered to have elevated levels of prolactin, evidencing that something in her condition had changed.

I further find that the claimant's testimony regarding the events surrounding her encounter with Linda Bridges was more credible than the other witnesses offered by the employer. The claimant testified that Bridges was angry because of a problem with her social security check being deposited into the proper account. She further testified that Bridges grabbed her and placed her a headlock and put her hands around her throat.

Yet, Amy Tribble testified that Bridges, "come up behind her, and you know, grabbed her around the neck, put her arm around her neck in a playful manner...". Likewise, Angela Castleman said Bridges put her arm around the claimant neck and shoulder in a

laughing manner and that the claimant was also laughing. I find that it is frankly bizarre that a customer would, in any manner, grab a bank teller by the neck.

Furthermore, since the claimant and Bridges had been discussing a matter in which Bridges was dissatisfied, I found the claimant's testimony regarding the violent nature of the encounter to be more credible.

_____ Finally, I note that all parties agree the claimant was not feeling well almost immediately after this incident, and then subsequently suffered from a seizure for which an ambulance had to be called. Significantly, the claimant was noted to have an abrasion to her shoulder, which would seemingly corroborate the claimant's account of the violent interaction with Bridges. Furthermore, the existence of the abrasion and the almost immediate onset of a seizure after the incident would logically lead to the conclusion that Bridges' actions caused the claimant to have the seizure.

In sum, I find that while the claimant admittedly had suffered from seizure-like episodes prior to the encounter with Bridges, she had never been objectively shown to have seizures. In fact, all

diagnostic tests negated such a finding. In contrast, the claimant, almost immediately after the encounter with Bridges, suffered from a seizure, which was shown by elevated levels of prolactin and an abnormal EEG. As such, I would have affirmed the decision of the Administrative Law Judge and must now respectfully dissent.

PHILIP A. HOOD, Commissioner