

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F606528

CARL BOLT, EMPLOYEE	CLAIMANT
BAILEY PAINT CO., INC., EMPLOYER	RESPONDENT
BRIDGEFIELD CASUALTY INS. CO., INSURANCE CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 17, 2008

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

Claimant appears Pro Se.

Respondent represented by the HONORABLE MICHAEL RYBURN,
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 April 4, 2008. The administrative law judge
found that the claimant proved he sustained a compensable
injury to his left shoulder and neck. After reviewing the
entire record *de novo*, the Full Commission reverses the
opinion of the administrative law judge. The Full
Commission finds that the claimant did not prove he

sustained a compensable injury to his left shoulder or neck.

I. HISTORY

The record indicates that Carl Columbus Bolt, age 46, began working for Bailey Paint Company in May 2006. The parties stipulated that the employment relationship existed at all relevant times, including June 1, 2006. The claimant testified *pro se*: "I jumped. I jarred something, and it's hurt ever since."

A First Report Of Injury indicated that the claimant had strained his left shoulder while descending scaffolding on June 1, 2006. Dr. A. Sharon Meador signed a Report on June 1, 2006 indicating that the claimant was diagnosed with cervical strain, left shoulder strain, and right elbow strain. The claimant was taken off work "the balance of this shift only" and then return to modified duty. Dr. Meador prescribed Naproxen for the claimant "as needed" on June 1, 2006. The claimant was also prescribed Flexeril, Lortab, Hydrocodone, and Cyclobenzaprine.

Dr. William Warren examined the claimant on June 9, 2006, but Dr. Warren's notes indicated no objective medical findings. X-rays of the claimant's cervical spine, left shoulder, and right elbow were negative. Dr. Warren

assessed cervical strain, shoulder strain, and elbow pain. The claimant was prescribed Celebrex "for ten days as tolerated." A Concentra transcription indicates that the claimant was treated on June 9, 2006 and was diagnosed with neck sprain. The claimant was assigned work restrictions.

Dr. Warren signed a Form AR-3, Physician's Report, on June 15, 2006. According to the report, the claimant was diagnosed with neck sprain, pain in joint involving upper arm, and sprains and strains of shoulder and upper arm. The Physician's Report indicated that the claimant had been treated with a Toradol injection and that the claimant had been returned to restricted work on June 9, 2006.

The claimant was prescribed Skelaxin and Ultram on January 4, 2007 for chronic neck and back pain. The claimant was prescribed Tramadol on January 6, 2007.

A pre-hearing order was filed on January 28, 2008. The claimant contended that he sustained a left shoulder and neck injury as a result of jumping off a scaffold, approximately four feet high. The claimant contended that he was entitled to temporary total disability and medical benefits. The respondents contended that the claimant was not injured when he jumped down off of a scaffold. The

respondents contended that the claimant had no objective medical findings.

The parties agreed to litigate the following issues: "1. Compensability of claimant's alleged left shoulder and neck injury. 2. Whether claimant is entitled to temporary total disability benefits from the date of the injury until a date yet to be determined, except a half day he worked shortly after the injury. 3. Whether the claimant is entitled to medical treatment."

A hearing was held on March 10, 2008. The administrative law judge announced at that time, "I believe Mr. Ryburn is in agreement with the Commission, the entire commission's file being marked as Commission's Exhibit No. 2." The respondents' attorney did not object to admitting the Commission's file into evidence.

The administrative law judge found, among other things, that the claimant proved he sustained a compensable injury to his left shoulder and neck. The respondents appeal to the Full Commission.

II. ADJUDICATION

A. Compensability

Ark. Code Ann. §11-9-102(4) (A) (Repl. 2002) 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) (A) (i).

The employee's burden of proof shall be a preponderance of the evidence. Ark. Code Ann. §11-9-102(4) (E) (i). Preponderance of the evidence means the evidence having greater weight or convincing force. *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

In the present matter, an administrative law judge found that the claimant proved he sustained a compensable injury to his left shoulder and neck. The Full Commission reverses this finding. At the beginning of the March 10, 2008 hearing, the administrative law judge took the unusual step of admitting the entire Commission file into evidence.

The respondents did not object. The Full Commission has reviewed the Commission's entire file, now admitted into the record on appeal, as well as the transcript admitted into the record. The claimant did not establish a compensable injury by medical evidence supported by objective findings. None of the treating doctors' physical examinations of the claimant showed any objective medical findings. There were no reports of spasm, swelling, ecchymosis, bruising, or any other objective findings. The x-rays did not show any objective medical findings. None of the medications of record in the present matter, including Naproxen, Flexeril, Lortab, Hydrocodone, Cyclobenzaprine, Celebrex, Skelaxin, and Ultram, were prescribed "as needed for muscle spasm" or any other objective medical finding. We can determine no reasonable inference in the present matter that the claimant was prescribed medication to treat objective medical findings. See, *Fred's Inc. v. Jefferson*, 361 Ark. 258, 206 S.W.2d 238 (2005).

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove he sustained an accidental injury causing internal or external physical harm to his body. Nor did the claimant establish a

compensable injury by medical evidence supported by objective findings. We therefore reverse the administrative law judge's decision, 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. The majority, reversing the Administrative Law Judge, states: "the claimant did not prove he sustained an accidental injury causing internal or external harm to his body. Nor did the claimant establish a compensable injury supported by objective findings." The majority has clearly erred. After a de novo review of the record, I find that the claimant did prove he sustained accidental injuries supported by "objective findings", and therefore, I must respectfully dissent.

For the claimant to prove a compensable injury as a result of a specific incident that is identifiable by time and

place of occurrence, a claimant must establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2005). Mikel v. Engineering Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997). I find that the claimant has proved by a preponderance of the evidence all of the elements for compensable specific incident neck and left shoulder injuries, supported by "objective findings." The claimant credibly testified that on June 1, 2006, he injured his neck and left shoulder by falling approximately four feet from a scaffold on the morning of June 1, 2006. The claimant credibly testified that he promptly reported the incident to management, who later transported him to Conway OccuMed Treating Physician for medical treatment, which was administered under the care of Dr. Sharon Meador. Dr. Meador's notes dated June 1, 2006, show that she diagnosed the

claimant as having "cervical strain, left shoulder strain and right elbow strain." Prescription notes demonstrate that Dr. Meador prescribed medications for the claimant, which included, a prescription for Flexeril. Despite Dr. Meador's diagnosis and the Flexeril prescription, the majority, reversing the Administrative Law Judge states:

None of the treating doctors' physical examinations of the claimant showed any objective medical findings. There were no reports of spasm, swelling, ecchymosis, bruising, or any other objective findings. The x-rays did not show any objective medical findings. None of the medications of record in the present matter, including Naproxen, Flexeril, Lortab, Hydrocodone, Cyclobenzaprine, Celebrex, Skelaxin, and Ultram, were prescribed "as needed for muscle spasm" or any other objective medical finding. We can determine no reasonable inference in the present matter that the claimant was prescribed medication to treat objective medical findings.

The majority's above-outlined conclusion, based on the evidence of record and based on relevant Arkansas case law, is simply baffling. Pursuant to the Arkansas Supreme Court's ruling in Fred's, Inc. v. Jefferson, 361 Ark. 258, 206 S.W.3d 238 (2005), cited but apparently misunderstood by the majority, Dr. Meador's prescription for Flexeril satisfies the objective findings requirement. Specifically, the Arkansas

Supreme Court has held that treatment designed to relieve symptoms associated with an objective finding is sufficient to meet the objective medical findings criteria in the Workers' Compensation Act. See Fred's, Inc. v. Jefferson, 361 Ark. 258, 206 S.W.3d 238 (2005) and Estridge v. Waste Management, 34 Ark. 276, 33 S.W.3d 167 (2000). In Fred's, addressing the same erroneous reasoning the majority has used in the instant claim, the Court stated: "[A] reasonable inference from the chronology of events was that the medication and physical therapy were prescribed to aid [the claimant] and to treat her injury; any other construction of these events did not withstand scrutiny or pass the test of reasonableness." Fred's, Inc. v. Jefferson, 361 Ark. at 259. Here, the claimant reported to Dr. Meadors on the same day as the incident in question. Dr. Meadors diagnosed the claimant as having "cervical strain, left shoulder strain and right elbow strain". Furthermore, the claimant also saw a Dr. Warren on June 9, 2006. Dr. Warren's reports also corroborate the claimant's account of the incident. In accord with Dr. Meadors, Dr. Warren assessed the claimant as having "cervical strain, shoulder strain and elbow pain," for which he prescribed Celebrex, physical therapy three times within the

next week, and administered an injection of Toradol. Based on the claimant's credible testimony, the chronology of events and the medical record, not only is the majority's statement that it "can determine no reasonable inference in the present matter that the claimant was prescribed medication to treat objective medical findings" a mis-statement of the Court's holdings in Fred's and Estridge, it also does not, as per Fred's and Estridge, "withstand scrutiny or pass the test of reasonableness."

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner