

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F607004

JANIS A. COSSEY,
EMPLOYEE

CLAIMANT

GARY A. THOMAS RACING STABLE,
EMPLOYER

RESPONDENT

UNION INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 27, 2008

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

Claimant appeared Pro Se.

Respondent represented by the HONORABLE WILLIAM C. FRYE,
Attorney at Law, North Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed September 11, 2007. The administrative law judge found that the claimant proved she sustained a compensable injury. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's finding. We find that the claimant did not prove she sustained a compensable injury.

I. HISTORY

Janis Ann Cossey, age 50, testified that she had worked for Gary Thomas Racing Stables at Oaklawn Park. Ms. Cossey testified that she walked four horses, groomed, did tack and some laundry. The parties stipulated that there was an employer-employee relationship on February 2, 2005. The claimant testified that "a horse jumped out of the stall - his head - and bit me and pulled me toward him, crushing my arm and pulling up the meat of my arm....in between the elbow and the shoulder." The claimant testified that the alleged accident occurred at approximately 10 a.m. on February 2, 2005, and that she reported the injury to Gary Thomas.

The claimant testified, "Two days later I was walking a horse in the barn, again. It was feed time after the race. And a horse, during feed time, jumped out of the stall and bit me on the shoulder....Then this first bite was so horrible, because it had smashed it and it was open and gaping, that I was concerned the most about the first horse bite - to keep it clean because the doctor was worried. The second bite was not an open bite."

The record indicates that the claimant was not actually seen by a physician until February 15, 2005, at which time the history was "Horse Bite this AM." The record indicates that a physical examination was carried out but there were no objective medical findings noted. The assessment was "Horse Bite." The claimant was treated with a tetanus shot and medication.

An x-ray of the claimant's wrist was taken one year later, on February 16, 2006: "Radiographically negative carpal tunnel view. An MRI of the wrist can give additional information related to the ligaments."

The claimant was seen at a medical clinic on February 28, 2006. According to the record, the claimant stated that she had been in an emergency room on February 16, 2006, had been diagnosed with "brachial palsy," and had suffered a horse bite to the "tricep" one year earlier. The claimant reported no feeling in her hand and throbbing in her elbow. A physician wrote that the claimant had "scar L forearm & also L deltoid atrophy."

A note dated March 6, 2006 indicated that the claimant had left a clinic while she was cursing and slammed a door, and that the claimant was not to return.

During a Clinic Visit on March 14, 2006, the claimant complained of left arm numbness and a "Lt hand drop" apparently on February 12. The claimant reported "spasms across shoulder" and upper back. The claimant was assessed as having "Radial Palsy."

On March 15, 2006, the claimant was served with a Notice Of Ejection And/Or Denial Of Admission from Oaklawn Park, on the grounds, "Cause (sic) disturbance in the clinic."

An electromyographic study was done on March 22, 2006, with the following interpretation:

Electromyographic examination of both upper extremities is normal with the exception of evidence of decreased recruitment in radial innervated musculature of the left upper extremity distal to muscular branches to the triceps in the absence of fibrillation potentials or other evidence of active denervation. The radial motor and sensory nerve conduction studies are also normal indicating that axon loss is not likely etiologic in this case but rather demyelination. There are no electrical findings suggestive of a superimposed cervical radiculopathy or other lesion of the lower motor neuron in the upper extremities at this time. There is no evidence of active denervation.

The claimant was assessed with "Radial nerve palsy, left" on March 28, 2006.

Dr. John Fox saw the claimant at UAMS Medical Center on May 25, 2006 and noted, "We reviewed the findings of the EEG and nerve conduction studies that were done at an outside hospital on 3/24/06 that showed the pattern of the deficits on that study to be suspicious for demyelination....We will plan on referring Ms. Cossey for evaluation by Neurology Service." Dr. Fox assessed "Neuropathy."

Dr. J. Crenshaw noted on June 14, 2006, "Janis Cossey has left shoulder & arm injury from horse bite & can not lift or be active with left arm."

An x-ray was taken on June 15, 2006, with the following impression: "Normal osseous appearance of the cervical spine....Normal osseous appearance of the left shoulder."

Dr. R. Paul Tucker examined the claimant on October 3, 2006:

This 49 year old right handed white woman has been bitten by two horses, both thoroughbreds, in March of 2005. One horse acted as if he were going to bite into her shoulder very badly for unclear reasons. He bit her below the shoulder, about four inches, injuring the front and back of her arm. It is possible that his lower teeth touched the region where the radial nerve crosses the humerus. At the other time, she was bitten by another horse on the same shoulder, up at the top of the shoulder, with a smaller bite. Three days later, she was waiting tables, when she experienced severe pain in her shoulder again. On

February 6th of this year, almost a year later, she was walking some horses on the track. In the morning, she awakened with a left wrist drop....It is noted the bits (sic) from the horses had not healed at the time when she suffered the apparent clinical radial nerve palsy....

The patient says she cannot work now. She has not been working for some time. She cannot lift anything. She cannot hold horses well because of the stress they put on her arm. She can work only with one arm. She can lift light things such as a folder, but cannot hold it very well. She has applied for social security disability and has apparently been denied. She was denied Medicaid.

She wore a wrist brace for four months after the wrist drop was discovered. When she finally took this off, and had been doing some exercises, she had good function of the left wrist....

She has some scars on the left arm, where she was bitten, particularly on the anterior part of the left upper arm. This has never healed over completely. It is dry but it is irregular area and is certainly a scar and there is not normal appearing skin. This must have been an area that closed over....She has an indentation of the upper arm, in the area where the circumflex branch of the radial nerve supplies part of the deltoid muscle. I suppose some injury to this part of the nerve could have caused this clear indentation. This is not a temporary problem. I thought this indentation was just above the area of the scar, but my nurse has drawn this as just below. At any rate, they are both closely related. She has some clear atrophy of this part of the upper arm. I did not note atrophy in the forearm itself....

IMPRESSION: She has some objective findings. She has some atrophy of some parts of the deltoid muscle below the circumflex branch of the radial nerve. She has clear skin lesions where the horse bite left areas of the skin that did not heal

over properly.

It would be meaningful to carefully compare the two arms again. We could look at such things as the radial nerve F-wave on the two sides. Sometimes F-waves are difficult to obtain. We will also obtain the median ulnar nerve studies, but I do not think they are quite as important as the radial nerve study.

The patient has suffered a severe injury, with some neurological problems such as (sic) the atrophy of the muscle related to the horse bite. It is difficult to relate this to anything else.

I am impressed that she does not attempt to feign weakness and sensory loss.

We will do a careful EMG search of the upper parts of the arm, and this may disclose some other changes, for example in the area of atrophy. Hopefully we can accomplish these things. It might be worthwhile doing an MRI of the left shoulder to see if she has a rotator cuff tear. Certainly the horse bites could have caused some injury to the rotator cuff and she has some restrictions of motion of the left shoulder.

Dr. Tucker wrote to Dr. Crenshaw on October 3, 2006 and stated in part, "There is no doubt the two horse bites produced some damage to the arm, and one can see the skin lesion still remaining. I think it would be absurd to think the indentation of the upper arm is not related to the horse bites. There is very localized atrophy, possibly related to damage to the circumflex branch of the radial nerve. The horse bite could have produced an injury to the radial

nerve, although it would be surprising that the radial nerve palsy did not occur until a year later."

An MRI of the claimant's left shoulder was taken on October 20, 2006:

There is a small degenerative subchondral cyst in the lateral aspect of the humeral head. The acromion is slightly downsloping. There is a small amount of high signal seen in the supraspinatus tendon approximately 1.5 cm from the insertion compatible with tendinopathy. Mild hypertrophic changes are noted at the acromioclavicular joint....

Impression

1. Downsloping acromion with an underlying area of mild signal abnormality in the supraspinatus tendon compatible with tendinopathy. There may also be small undersurface tears.
2. Small subchondral cyst in the humeral head.

Dr. Tucker performed an outpatient EMG and nerve conduction study on November 10, 2006:

HISTORY: This 49-year-old woman was bitten in the left shoulder by a horse. She developed a radial nerve palsy which is now improving at this time. It has been over a years (sic) since she was bitten. She has some areas of atrophy, particularly affecting the shoulder itself on the left at the tip of the shoulder with one area posteriorly where there is an indentation in the muscle as if some small branch of perhaps the axillary nerve was injured. Something very focal happened there. The shoulder itself is somewhat atrophic as if the axillary nerve may have been damaged also. She has pain in the arm, particularly in the posterior part of the deltoid and in the upper portion of the triceps. She has

clear but very mild weakness of left wrist extension....

IMPRESSION: Despite the atrophy I did not find denervation in the EMG. This has been present for a long time and may be fairly stable now. One might think the pain would be gone by now, but of course pain is an impossible thing to measure. It appears that she is making a fairly good recovery, although it is apparent that the shoulder may never be the same as her other shoulder and its appearance is different. The nerve conduction studies are really very good. If anything the left radial nerve is perhaps a little better than the right radial nerve but they are very comparable. I think she will continue to have improvement in her muscle power. Hopefully at some point she will be able to return to some type of employment. She has been a waitress before and that may be difficult. One would hope that the pain would resolve in time.

Inspection of the claimant's left upper extremity at UAMS on November 19, 2006 showed no swelling and the claimant's shoulder and elbow were stable.

Dr. Tucker noted on April 9, 2007, "Her injuries have changed her life. She cannot do the type of hard physical labor she did before. Her left arm is weak. She has a sharp pain in the left wrist."

A pre-hearing order was filed on June 12, 2007. The claimant, *pro se*, contended that she sustained a compensable horse bite injury on February 2, 2005. The claimant contended that she was entitled to medical benefits and TTD

benefits from February 16, 2006 to a date to be determined.

The

respondents contended that no benefits had been paid and that the claim had been controverted in its entirety. The respondents contended that "if the claimant has a health problem now it is unrelated to any work injury." The parties agreed to litigate the following issues: "1. Compensability. 2. Medical benefits. 3. TTD benefits."

A hearing was held on August 8, 2007. The claimant testified, "The horse bite has never healed....Now it's spread all the way up through my whole half of my back and in my joints. My muscles are deteriorating. I have indentations from all the bites - clear indentions (sic). And it's gotten pretty critical at this point. I have no money for medical, so I've had to just stop and wait for my appointment at UAMS."

The administrative law judge found, in pertinent part:

3. The claimant has proven by a preponderance of the evidence that she sustained a compensable shoulder/arm/wrist injury arising out of and in the course of her employment.
4. Respondents are responsible for all reasonable and necessary treatment the claimant has received regarding the horse bite injuries to her left arm, shoulder and wrist.
5. The claimant has proven ... that she remained in her healing period and had not returned to work

because of her compensable arm and hand injuries from February 16, 2006, to a date to be determined.

The respondents appeal to the Full Commission.

II. ADJUDICATION

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 claimant must prove by a preponderance of the evidence that she sustained a compensable injury. 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 sustained "a compensable shoulder/arm/wrist injury." The Full Commission reverses this finding. The claimant testified that she was bitten by a horse on February 2, 2005 and that she was bitten again two days later. The claimant was treated for a "Horse Bite this AM" on February 15, 2005 and was given a tetanus shot and medication. However, there were no objective medical findings noted and the medical report did not support the claimant's testimony that her arm was crushed with a "gaping" wound or that "meat" was "pulled up" in the claimant's arm. Nor were any "indentations" shown in the claimant's arm or shoulder.

An x-ray of the claimant's wrist in February 2006 was negative. We recognize that a physician noted a scar on the claimant's left forearm and left deltoid atrophy in February 2006. Nevertheless, the record shows no causal connection between the scar/atrophy and the alleged horse bites occurring one year earlier. Nor does the record demonstrate a causal connection between the alleged bites and the assessment of radial palsy in March 2006. An electromyographic study done in March 2006 was normal except

for "decreased recruitment in radial innervated musculature of the left upper extremity." Once again, there is no causal connection between the electromyographic abnormality in March 2006 and the alleged compensable injuries of February 2005. Nor was Dr. Fox's assessment of "neuropathy" in May 2006 causally related to the alleged specific incidents of February 2005.

The Full Commission recognizes Dr. Crenshaw's statement in June 2006, "Janis Cossey has left shoulder & arm injury from horse bite & can not lift or be active with left arm." The Commission is entitled to review the basis for a doctor's opinion in deciding the weight and credibility of the opinion and medical evidence. *Swift-Eckrich, Inc. v. Brock*, 63 Ark. App. 118, 975 S.W.2d 857 (1998). In the present matter, the claimant was not a credible witness and her history and details of the alleged injuries are not supported by the record. We must therefore assign minimal weight to Dr. Crenshaw's statement that the claimant had a left shoulder and arm injury.

The Full Commission also recognizes Dr. Tucker's treatment of the claimant beginning in October 2006. Dr. Tucker opined that the claimant had suffered "a severe

injury" with resulting neurological problems and atrophy. The Commission has the authority to accept or reject medical opinion and the authority to determine its medical soundness and probative force. *Green Bay Packing v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 692 (1999). The record before the Commission simply does not support Dr. Tucker's opinion that the claimant suffered a severe injury with resulting neurological problems and atrophy. Nor is there even a scintilla of evidence supporting Dr. Tucker's conclusion in October 2006 and following that the claimant had "skin indentations" and "lesions" as a result of the alleged February 2005 accidents. Dr. Tucker's opinion in this regard is entitled to no weight. Finally, the record does not show that the "downsloping acromion" shown in the claimant's left shoulder in October 2006 was in any way related to the alleged compensable injuries.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove she sustained an accidental injury causing physical harm to her body and arising out of and in the course of her employment with Gary Thomas Racing Stable. The claimant did not prove that there was a specific incident identifiable by time and

place of occurrence. Nor did the claimant establish a compensable injury by medical evidence supported by objective findings. The administrative law judge's decision is reversed, 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, finds that the claimant did not prove by a preponderance of the evidence that she sustained compensable specific incident shoulder injuries in the course and scope of her employment. Based upon a de novo review of the record, I find that the claimant has met her burden of proof by a preponderance of the evidence establishing that she sustained compensable specific

incident shoulder injuries, 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 shoulder injuries, supported by "objective findings." First, the claimant presented credible testimony that she sustained two horse bites to her left arm and shoulder in February

2005. The claimant reported the incident to her employer and sought medical treatment with the track doctor on February 15, 2005. The track doctor prescribed an antibiotic and administered a tetanus shot. The claimant did not seek medical treatment again until February 16, 2006, when she sought emergency room care for hand numbness. An x-ray of the wrist was negative for carpal tunnel. The next treatment sought by the claimant was at the Charitable Christian Clinic on February 26, 2006, and this report noted the claimant's complaints of weakness and numbness of the left hand and wrist. This report also noted the scar on the left forearm and left deltoid atrophy. An initial diagnosis of radial palsy was noted on this report. The March 14, 2006, report notes spasms across shoulders and back and notes the claimant is unable to use the left wrist and had left wrist drop. Medication was prescribed. I find, based on the claimant's credible testimony and the supporting medical record that the claimant has clearly proved by a preponderance of the evidence that she sustained compensable left shoulder

and arm injuries while working for the respondent in February 2005.

Second, the medical evidence clearly contains "objective findings" establishing the existence and the extent of the claimant's injuries. See Ark. Code Ann. §11-9-102(16)(A)(i). Specifically, the physician's notes of scarring, muscle atrophy, and spasms satisfy the "objective findings" requirement. The claimant is not required to prove the causal relationship between the injury and work-related accident with objective medical evidence. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W. 2d 522 (1999). Here, the claimant has presented objective findings of her injury, and has proved the causation element through her credible testimony as well as the medical record. As stated by Dr. Paul Tucker, a neurologist, in a letter dated October 3, 2006:

....I think it would be absurd to think the indentation of the upper arm is not related to the horse bite. There is very localized atrophy, possibly related to damage to the circumflex branch of the radial nerve. The horse bite could have

produced an injury to the radial nerve, although it would be surprising that the radial nerve palsy did not occur until a year later.

It is very important to note that she makes no attempt to feign weakness of sensory loss.

Dr. Tucker goes on to state that he hopes to be able to obtain some further studies.

Third, I find that the respondents are responsible for the reasonable and necessary medical treatment the claimant has sought. The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a) (Repl. 2002). Injured employees must prove that medical services are reasonably necessary by a preponderance of the evidence; however, those services may include that necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing achieved; or to prevent further

deterioration of the damage produced by the compensable injury. Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2002); Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995); See Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). A claimant does not have to provide objective medical evidence of her continued need for treatment. Castleberry v. Elite Lamp Co., 69 Ark. App. 359, 13 S.W. 3d 211 (2000), citing Chamber Door Indus., Inc. v. Graham, 59 Ark. App. 224, 956 S.W. 2d 196 (1997). The latest medical in evidence regarding the claimant's left shoulder/arm/wrist is from Dr. Tucker, who recommended a cervical spine MRI on December 8, 2006; as well as some exercises and some weight lifting. Dr. Tucker's April 9, 2007, report discussed the EMG and nerve conduction study he had ordered, and he noted that while he did not find specific denervation; he stated that "there is no doubt she has some serious problems."

Finally, I find that the claimant is entitled to temporary total disability benefits from February 16, 2006, to a date yet to be determined. The claimant has been treating for a left shoulder, left arm, and left

wrist injury. In order to be entitled to temporary total disability benefits for a shoulder injury, the claimant must remain in her healing period and be totally incapacitated from earning wages. Ark. State Hwy. & Transp. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). For a scheduled injury, the claimant is entitled to temporary total disability benefits while he/she is within his/her healing period and has not returned to work. See, Ark. Code Ann. §11-9-521(a) (Supp. 2005); Wheeler Const. Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001). I find that the claimant presented credible testimony that after the wrist drop of her left hand she could not work one-handed and was totally unable to earn wages. Furthermore, the claimant's credible testimony is supported by the medical record which shows that by February 16, 2006, the claimant's primary problems are with her left wrist and left arm, rather than her shoulder. Dr. J. Crenshaw of the Charitable Christian Medical Clinic, on June 14, 2006, wrote a note stating the claimant cannot lift or be active with the left arm. Based on the medical evidence and the claimant's credible testimony, I find

the claimant has proven by a preponderance of the evidence that she remained in her healing period and had not returned to work because of her compensable scheduled injury from February 16, 2006, to a date to be determined and is entitled to temporary total disability benefits.

In conclusion, I find that the claimant has proved by a preponderance of the evidence of record that she sustained compensable specific incident injuries to her left shoulder and arm in February 2005. I find that the claimant is entitled to the reasonable and necessary medical treatment she has sought for her compensable injuries as well as temporary total disability benefits from February 16, 2006 until a date yet to be determined.

PHILIP A. HOOD, Commissioner