

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F611688

REGINALD DENT, EMPLOYEE	CLAIMANT
JOHN WESTLIN CONCRETE, EMPLOYER	RESPONDENT
BRIDGEFIELD CASUALTY INSURANCE, CARRIER	RESPONDENT

OPINION FILED AUGUST 8, 2008

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

Claimant is not represented by counsel but appears *pro se*.

Respondent represented by HONORABLE JAMES A. ARNOLD, III, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed July 5, 2007.

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

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on April 26, 2007, and contained in a pre-hearing order filed April 27, 2007, are hereby accepted as fact.

2. The claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury while employed by the respondent. Specifically, there are no objective findings as required for compensability.

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

I must respectfully dissent from the majority's opinion. The majority, by affirming and adopting the Administrative Law Judge, finds that the claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury while employed by the respondent. After a de novo review of the record, I find that the claimant has met his burden of proof by a preponderance of the evidence that he sustained compensable specific incident injuries to

his shoulders and elbows August 11, 2006, and therefore, I must respectfully dissent.

A finding of compensability calls for proof of a specific incident, identifiable by time and place of occurrence, arising out of and in the course of employment, causing physical harm to the body, requiring medical treatment or resulting in disability, which is established by medical evidence and supported by objective findings. Ark. Code Ann. §11-9-102(A)(i) and §11-9-102(4)(D).

_____The claimant worked for the respondent in concrete construction where he used heavy machinery and hand tools on a regular basis. On August 11, 2006, the claimant was operating a jackhammer while breaking up cement at work when he began experiencing pain in both of his elbows and his shoulders. On that date, the claimant notified the respondent of the injury and was placed on light duty until August 22, 2006. The respondent initially accepted the claim as compensable but later controverted the claim in its entirety. The Administrative Law Judge denied the claim, noting that there were no objective medical findings.

_____The Administrative Law Judge denies the claimant benefits based on the determination that the claimant could not show objective findings of any injuries incurred on August 11, 2006. "Objective findings" are those findings which cannot come under the voluntary control of the patient. See Ark. Code Ann. §11-9-102(16)(A)(i). 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). "[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 was injured on August 11, 2006 and was placed on light duty until August 22, 2006. On August 22 he reported to the Boone

Hospital Emergency Room, again complaining of shoulder and elbow pain. Again, the claimant was diagnosed with bilateral epicondylitis, which is an overuse syndrome "caused by continued stress on the grasping muscles... of the forearm. With continued stress, the muscles and tendons hurt even at rest, and there is progression to... *calcification*..." [emphasis added], Merck Manual 505 (17th Edition 1999). On November 21, 2006, the claimant returned to the hospital because of his elbow pain, relating it back to the August 11 incident. At that time the claimant was prescribed additional physical therapy three times a week for two weeks. Even though Dr. Dennis Motchan returned the claimant to regular duty on November 21, he also prescribed more medicine for the claimant as well as additional physical therapy. The claimant continued to follow the company doctor's instructions and underwent physical therapy until December 21, 2006, when he visited Dr. Gregory Hummel. Dr. Hummel treated the claimant by injecting his right elbow with Aristocort and Xylocaine and prescribing Darvocet-N. Dr. Hummel also continued his physical therapy and, on

January 18, 2007, recommended two weeks of "work hardening" to extend the claimant's physical therapy.

The Administrative Law Judge's finding that the claimant did not have "objective findings" is clearly in error. The claimant has produced objective findings of bilateral epicondylitis. Specifically, medical records exhibits from the hearing mention calcification, as noted in the December 21, 2006 narrative from Dr. Hummel:

"Radiographs show some calcific changes about the capsular area...." As stated above, the Merck Manual notes that calcification on the lateral epicondyle is part of lateral epicondylitis' etiology. In his medical narrative, Dr. Hummel noted such calcification. In addition to the objective findings of calcific changes shown on the radiograph as noted by Dr. Hummel, I find that the reasonable inference from the chronology of the physical therapy and the medications prescribed is that the claimant has presented "objective findings" of compensable bilateral epicondylitis, as diagnosed by all of the medical professionals the claimant consulted. Furthermore, as the

Arkansas Supreme Court stated that "objective findings" are defined in part as medical opinions stated within a reasonable degree of medical certainty. Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d (2001). The medical records show that Dr. Motchan, Physical Therapist Jennifer Kunza, the initial emergency room doctor from Boone Hospital Center, and Dr. Hummel all note epicondylitis in their medical records. The Merck Manual describes the medically accepted tests that are used to diagnose lateral epicondylitis:

"On examination, if the fingers are extended against resistance when the elbow is held straight, pain occurs along the common extensor tendon. Alternatively, the patient sits on a chair with the arm resting on a table. The hand is held palm downward, and the elbow is straight. The examiner places a hand firmly on top of that of the patient, who tries to raise the hand by bending the wrist. The same pain occurs."

The Workers' Compensation statute would require an objective test over and above what is used by medical professionals to diagnose such a condition. The Workers' Compensation statute

conflicts with generally accepted medical techniques. It is completely unreasonable for the Administrative Law Judge to find that four medical professionals, using medically-accepted tests, diagnosed the exact same condition, and the calcific changes noted by Dr. Hummel, are not enough to show that such a condition did, in fact, exist, which is the purpose of the objective findings statute. Based on the preponderance of the evidence of record, I find that the claimant has proved the compensability of his bilateral epicondylitis, specifically I find that the claimant has shown that there are objective findings of bilateral epicondylitis.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner