

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F706993

CONLEY J. JOHNSON, EMPLOYEE	CLAIMANT
GEORGIA PACIFIC CORP., EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MGMT SVCS., INC., TPA	RESPONDENT

OPINION FILED DECEMBER 22, 2008

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

Claimant represented by HONORABLE KENNETH E. BUCKNER, Attorney at Law, Pine Bluff, Arkansas.

Respondent represented by HONORABLE SUSAN M. FOWLER, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed January 30, 2008.

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

- 1) The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
- 2) The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.

3) The claimant has failed to prove by a preponderance of the evidence that he sustained compensable injuries to his back, left elbow, or left shoulder on June 26, 2007.

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 concurs, in part, and dissents, in part.

CONCURRING AND DISSENTING OPINION

I respectfully concur, in part, and dissent, in part, from the majority opinion. The claimant appeals the April 29, 2008, opinion of an Administrative Law Judge, which finds that the claimant failed to prove compensability of left shoulder, left elbow, and lower back injuries incurred on June 26, 2007. More specifically, by adopting the decision of the Administrative Law Judge, the majority finds that the claimant was unable to show objective medical findings or that the injuries arose out of and in the course of the claimant's employment with the respondent. While I

agree that the claimant did not meet his burden of proof regarding the left elbow and lower back injuries by objective medical findings, after a de novo review of the record, I find that the claimant has met his burden of proof by the preponderance of the evidence for a compensable specific incident left shoulder injury, and therefore, I must respectfully dissent on this issue.

History

_____ The claimant has worked for Georgia Pacific since 1996. At the time of his injury, the claimant was working a light-duty job, sweeping the floors of the respondent's facility.

The claimant testified that he injured his left shoulder, left elbow, and lower back on June 26, 2007, when he fell while sweeping. The claimant testified that he notified the foreman, Ron Labette, of the injury shortly after the fall. The claimant testified that Mr. Labette took him to the cleanup crew foreman, who subsequently "wrote up" the injury.

The medical records indicate that on June 29, 2007, the claimant went to the Dallas County Medical Center Emergency Room in Fordyce, where he was examined by Dr. Hugh Nutt. The nurse at the ER wrote that the claimant "fell 2 days ago @ work. States supervisor was notified. States he didn't follow up with MD because it wasn't hurting until today." Dr. Nutt ordered an X-ray, prescribed Lorcet and an arm sling and referred the claimant to Dr. David Foscue. The medical records show that on October 1, 2007, Dr. Foscue noted "positive impingement sign of his left shoulder."

Discussion

I find that the claimant has shown that his left shoulder injury is both supported by objective medical findings and causally related to his employment with the respondent. First, the claimant's left shoulder injury is supported by objective medical findings. 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 claimant's left shoulder injury was confirmed on October 1,

2007, by Dr. Foscue's observation of "positive impingement sign of the left shoulder." While the Commission is empowered with the authority to weigh medical evidence and to examine the basis of an expert's opinion in deciding what weight to give it, the Commission may not arbitrarily disregard the testimony of any witness. Crow v. Weyerhaeuser Co., 46 Ark. App. 295, 880 S.W.2d 320 (1994). Clearly, an impingement cannot come under the voluntary control of the claimant. Therefore, I find that the claimant has shown proof by a preponderance of the objective medical findings establishing an injury to his left shoulder.

Second, the claimant presented proof by a preponderance of the evidence that his left shoulder injury arose out of and in the course of employment. The phrase "arising out of the employment" refers to the origin or cause of the accident, so the employee is required to show that a causal connection exists between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). The claimant testified that he

injured his left shoulder when he fell while sweeping the respondent's facility on June 26, 2007. The claimant also testified that he notified Ron Labette, the foreman, of the injury shortly thereafter. The claimant testified that Mr. Labette took him to the cleanup crew foreman, who subsequently "wrote up" the injury. The claimant attempted to ignore the pain, but it became too great, and he went to the Dallas County Medical Center Emergency Room in Fordyce, where he was examined by Dr. Hugh Nutt. The nurse at the ER wrote that the claimant fell at work two days earlier, that he notified his supervisor of the injury, and that he did not immediately seek further medical care because the left shoulder pain was manageable until June 29, 2007. Based on the claimant's credible testimony which is clearly corroborated by the medical records, I find that the claimant has shown, through a preponderance of the evidence, that the left shoulder injury is causally connected to the June 26, 2006 accident.

The majority, by adopting the decision of the Administrative Law Judge, erroneously places great

importance on the May 24, 2007 medical note from Dr. Eric Akin which mentions a left shoulder injury 32 days prior to the claimant's fall at work. This note is of little consequence for several reasons. First, the claimant was apparently able to continue work for 32 more days without complaint after May 24, 2007, demonstrating the lack of severity of the injury at that time. Second, if the respondent did know that the older injury was serious, they allowed the claimant to continue work after May 24, 2007, until the June 26, 2007 injury, showing that neither the claimant nor the respondent felt the injuries were serious. Third, both the injury from May 24, 2007, and the injury from June 26, 2007, were related to the claimant's employment with the respondent, making the causation argument moot.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner