

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F504747

KARL J. KOCH,
EMPLOYEE

CLAIMANT

McDONALD'S STORE 5712,
EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,
TPA

RESPONDENT

OPINION FILED MAY 15, 2008

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

Claimant represented by the HONORABLE FREDERICK S.
SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by the HONORABLE MICHAEL E.
RYBURN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed June 4, 2007. In said
order, the Administrative Law Judge made the following
findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over these claims.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. As held by the Arkansas Court of Appeals, the Arkansas Workers' Compensation Act is constitutional on the points argued by Claimant, and his motion to recuse is without merit.

4. Claimant has not proven by a preponderance of the evidence that he sustained a compensable injury to his left wrist on January 21, 2005.

5. The reasonable and necessary medical care issue is moot in light of the above finding.

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.

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 covered by the Act; however, the claimant has failed to establish the elements necessary to prove the compensable injury by a preponderance of the evidence.

Therefore we affirm and adopt the June 4, 2007 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. Based upon a de novo review of the record in its entirety, I find that the claimant has shown by a preponderance of the evidence that he sustained a compensable left wrist injury on January 21, 2005, and therefore, I must respectfully dissent.

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2002), must be established: (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 physical harm to the body which required medical services or resulted in disability or

death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

First, the claimant presented proof by a preponderance of the evidence that he sustained a specific incident injury, identifiable by time and place of occurrence, arising out of and in the course of his employment. The claimant credibly testified that on Friday, January 21, 2005, while working late for the respondent, he stepped on a greasy rubber mat, slid and slipped and fell on his left wrist, dropping a stack of pans in the process. The claimant testified that he did not really know that he was hurt at first but that he had slight pain in his left wrist. The claimant testified that he was embarrassed about falling and did not tell anybody about the incident that night. The

claimant testified that he and his co-employees then shut down the store and they all went home.

The claimant testified that his wrist swelled up on Saturday and that he put ice on it. The claimant was not scheduled to work Saturday, but he was scheduled to work Sunday. On Sunday morning when the claimant woke up his wrist was black and blue and throbbing with pain. The claimant testified that he talked to his grandma, who was a registered nurse and she told him to go to the emergency room. The claimant went to the emergency room, and called in to work to tell them that he was at the emergency room. The claimant testified that he told his employer about the fall, and was told that he needed to come in on Monday to talk to the head manager, Steve. The claimant testified that on Monday he told Steve what happened. The claimant testified that Steve told him he was not eligible for workers' compensation because he did not file the claim within twenty-four (24) hours. The claimant testified that Steve did not let him fill out any workers' compensation paperwork.

The claimant testified that after the emergency room visit he wore a temporary cast for seven days, and then he went to an orthopedic doctor who put him in a full cast for four weeks. The claimant

testified that as he had not gotten any assistance from Steve, he contacted the McDonald's area manager, Ron, who put him to work on the french fry machine. The claimant testified that he tried to work the fry machine, but was informed by management that he could not continue because the cast was a health risk around the food. The claimant testified that he worked two days with the cast and was then sent home for two weeks. The claimant testified that a "McDonald's lady" told him that he was fired, but did not give him a reason why.

I find, based on the claimant's credible testimony, which was un-rebutted by any respondent witnesses, and which is supported by the medical records, that the claimant has proved by a preponderance of the evidence that he sustained a specific incident injury on January 21, 2005 arising out of and in the course and scope of his employment.

Second, the claimant has presented proof by a preponderance of the evidence, supported by objective medical findings, establishing an injury that caused internal or external harm to the body which required medical services. In order for an injury to be compensable under Arkansas Workers' Compensation law, the claimant must show an injury causing internal or

external physical harm to the body which required medical services or resulted in disability or death. Ark. Code Ann. §11-9-102 (4) (A) (i). Here, the medical records show that on January 23, 2005, the emergency room doctor diagnosed the claimant with a left wrist fracture and treated the claimant with medication and a temporary cast. On January 28, 2005, Dr. Anthony McBride provided more medication and a four-week cast for the claimant's left wrist injury. The medical record clearly shows that the claimant suffered an injury requiring medical services.

Furthermore, the claimant has presented medical evidence of an injury supported by objective findings. Ark. Code Ann. §11-9-102 (4) (D). 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). While the claimant's X-rays were essentially negative, the medical records show that swelling and bruising were present, both of which can be objective medical findings. Meister v. Safety Kleen, 339 Ark. 91, 3 S.W. 3d 320 (1999). Furthermore, 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. 3rd 167 (2000). Here, the claimant was first diagnosed with a left wrist fracture, revised to a diagnosis of a left wrist sprain. He was treated with a cast, not once, not twice, but three times. It is simply unreasonable to find that Dr. McBride would provide treatment designed to relieve symptoms associated with a fracture, i.e., a cast, if in fact, the claimant had no objective findings warranting such treatment. In conclusion, I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his left wrist on January 21, 2005.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner