

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F609774 & F609775

JENNIFER L. MARTIN, EMPLOYEE	CLAIMANT
SCROLL TECHNOLOGIES, EMPLOYER	RESPONDENT
WAUSAU, INSURANCE CARRIER	RESPONDENT

OPINION FILED APRIL 7, 2008

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

Claimant represented by the HONORABLE GREGORY R. GILES, Attorney at Law, Texarkana, 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 April 9, 2007. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. There was an April 10, 2006, and a June 6, 2006, employer-employee relationship.
2. The compensation rates for the April 10, 2006, incident are \$302/227.
3. The compensation rates for the June 6, 2006, incident are \$255/191.

3. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury on April 10, 2006, or June 6, 2006.(sic)

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 she sustained compensable injuries that are governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injuries are, indeed, injuries that are covered by the Act; however, the claimant has failed to establish the elements necessary to prove these compensable injuries by a preponderance of the evidence.

Therefore we affirm and adopt the April 9, 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. 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 she suffered a compensable injury while employed by the respondent. After a de novo review of the record, I find that the claimant has met her burden of proof by a preponderance of the evidence that she sustained a compensable specific incident injury to her back on June 6, 2006, 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 (4) (D), 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, I find that the claimant has shown by a preponderance of the evidence that she sustained a specific incident back injury arising out of and in the course of her 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 her employment. Gerber Products v. McDonald, 15 Ark. App.

226, 691 S.W.2d 879 (1985). In Edens v. Superior Marble & Glass, 346 Ark. 487 (2001), the Arkansas Supreme Court held that "identifiable by time and place" meant subject to identification and did not require the claimant to specify the exact time of the occurrence. The claimant, 41 years old, worked for Scroll Technologies as a tester. The claimant testified that at the respondent's facility she would manually move compressors with the assistance of a "manipulator," a type of robotic lift. The claimant testified that on April 10, 2006, she felt a sharp pain in her back as she was unloading the last of five pallets of compressors. The claimant testified that she informed Andy Biddle, the acting floor supervisor, that she had hurt herself unloading the pallets. The claimant testified that Mr. Biddle suggested that the claimant put pain-relieving back patches in the hurting areas and take over-the-counter medication. The claimant testified that Mr. Biddle did not fill out any injury report or send claimant to the nurse's station. The claimant testified that the next day her specific task in respondent's facility was switched from unloading pallets to a job changing oil in the compressors, called "finals", which was a less physically strenuous task. The claimant testified that

she continued to work through the month of April and used Advil and Ibuprofen as well as back patches, all of which she purchased with her own money. The claimant testified that in addition to being placed in the lighter duty "finals" section, she was allowed to accomplish her tasks from a seated position. The claimant testified that on June 6, 2006, while struggling to remove fittings from a compressor, she felt a sharp pain shoot from her rear end down her leg.

The claimant was helped to the nurse's station by Steve May, her regular supervisor. The company nurse, Caron Manning, was not present but was contacted by telephone. Ms. Manning, not having seen the patient, did not write up the injury as work related. The claimant testified that on June 6 Steve May, wheeled her out to her car in a wheelchair. Mr. May testified that he had indeed wheeled the claimant out on June 6, 2006. The medical record shows that the claimant went to the Baptist Health Medical Center in Arkadelphia on June 6, 2006 complaining of "leg pain radiating from her lower back through her left buttocks and gluteus area down through her left upper leg on the hamstring area to the distal level of her knee." The record also indicates that the claimant completed a disability form from her

private disability insurance carrier on July 27, 2006 relating the injury to the June 6 incident at work. This claim was denied because she reported that her injury occurred at work.

Arkansas Courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. Hall v. Pittman Construction Co., 234 Ark. 104, 357 S.W.2d 263 (1962). Here, the evidence of record shows that the claimant experienced two specific incidents. On April 10, the claimant's injury manifested after she loaded pallets and the claimant's work duties were changed the next day. On June 6, the specific incident at work with the compressor fittings caused her to be wheeled out of work in a wheelchair and required an immediate visit to an emergency room. The claimant testified that she did not have leg and back problems before April 10 or June 6 and the record is devoid of any evidence indicating that the claimant has suffered from such problems in the past.

Therefore, based on the claimant's credible testimony, corroborating witness testimony, and the medical record, I find that the claimant has met her burden of proving that she sustained a specific incident back injury arising out of and in the course of her 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 physical harm to the body which required medical services or resulted in disability or death. 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). Also, the claimant must show 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). Here, the medical reports show that on August 16, 2006, Dr. Steve Nokes diagnosed the claimant with degenerative facet disease and right foraminal stenosis, and nurse

Aimee Hughes treated the claimant with prescriptions. The claimant's injury was confirmed by MRI on August 16, 2006. Therefore, I find that the claimant has shown proof by a preponderance of the evidence objective medical findings establishing an injury that caused internal or external physical harm to the body which required medical services.

The majority erroneously places great importance on the fact that the initial medical report states "she knows of no acute injury otherwise." However, the Arkansas Workers' Compensation Act does not require an immediate diagnosis, and it does not required that the claimant insist that the doctor's history contain the gory details of the occurrence. See Siders v. Southern Mattress Co., 240 Ark. 267, 398 S.W. 2d 901. Here, the claimant had just been wheeled out of work and was feeling the effects of what would later be diagnosed as sciatica, degenerative facet disease, and foraminal stenosis. The claimant was, as she credibly testified, in great pain. Furthermore, as the claimant credibly testified, she had indeed initially injured herself on April 10 and had been experiencing a lesser degree of pain up until the emergency room visit on June 6. The respondent was unable to provide any evidence that

contradicted this fact. Arkansas Workers' Compensation law does not require, and indeed prohibits, the claimant from diagnosing herself. Therefore, I find that the fact that she could not immediately recognize that her injuries on June 6 were related to an April 10 incident is reasonable.

I also find the respondent's argument that they had no notice of the work-relatedness of the claimant's injury to be extremely difficult to believe. The claimant's testimony that her employer knew she was injured at work on April 10, 2006 is bolstered by the fact that the next day she was reassigned to the "finals" section of respondent's facility, a lighter duty task, and the claimant was allowed to work from a seated position. The respondent did not provide evidence that the reassignment was anything other than an attempt to give the claimant a lighter duty task because she had reported an injury. Furthermore, claimant credibly testified that she was permitted to accomplish her job in the "finals" section from a seated position, which indicates the respondents were aware of a physical ailment.

As for the June 6, 2006 incident, it is no great leap of logic to find that when a person enters

Martin - F609774 & F609775 11

their industrial manufacturing job on their own two feet and then leaves several hours later in a wheelchair, that something occurred between the time she came to work and the time she left. It is clear from the evidence that the respondent knew claimant was injured between the time she arrived at work and when she was wheeled out on June 6.

In conclusion, I find that the claimant has met the required burden of proof by a preponderance of the evidence for a compensable specific incident injury and, therefore, the Full Commission should reverse the decision of the Administrative Law Judge. For the aforementioned reasons, I must respectfully dissent.

---

PHILIP A. HOOD, Commissioner