

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F510344

PATRICIA QUARLES,
EMPLOYEE

CLAIMANT

TARGET CORPORATION,
EMPLOYER

RESPONDENT

SEDGWICK CLAIMS MANAGEMENT SERVICES,
TPA

RESPONDENT

OPINION FILED JANUARY 17, 2008

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

Claimant appears pro se.

Respondent represented by the HONORABLE GUY ALTON WADE,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The claimant, *pro se*, appeals an administrative law judge's opinion filed January 22, 2007. The administrative law judge found that the claimant failed to establish by a preponderance of the evidence that she suffered a compensable injury. After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's finding.

I. HISTORY

The record indicates that Patricia Quarles, age 52, began employment at Target Corporation in December 2002. The parties stipulated that the employment relationship existed at all relevant times, including on or about August 9, 2005. The claimant testified that she felt "a catch" in her back while pushing a large box on a shelf. The claimant testified that she felt pain in her right hip and leg.

Dr. J. Eisenach saw the claimant on August 21, 2005: "Patricia is in as a Workers' Comp for Target. She was doing some stretching and bending, lifting stock while working on 08/09. She felt something kind of pull. Since then, she has had some pain in her right leg in sciatic fashion. It's worse when she sits for long periods of time....On exam, there is no muscle spasm of her back. She has typical radiation down the right leg in a sciatic fashion. Her DTRs are 2+ at knee and ankle bilaterally."

Dr. Eisenach assessed "1. HNP with right sciatica." Dr. Eisenach placed the claimant on light work duty and treated her conservatively. Dr. Eisenach examined the claimant on August 30, 2005 and noted "no palpable muscle spasm."

Dr. Eisenach noted on September 14, 2005, "She is being followed for a slipped disc in her lower back with right sciatica. She was lifting stock on 08/09/05, when she originally had the injury. She has been on the restriction of no lifting more than 25 pounds. She is ready to go back to regular work tomorrow....Her back exam is normal." Dr. Eisenach assessed the following: "1. HNP with right sciatica, resolving. 2. History of elevated blood pressure." Dr. Eisenach returned the claimant to full duty work starting September 15, 2005.

The claimant signed a Form AR-C, Claim For Compensation, on September 28, 2005. The Form AR-C showed a Date of Accident of August 9, 2005 and the claimant described the alleged injury: "Sciatic nerve along right leg up to hip area (lower back) injury caused by overextending my reach while bending down and stretching to place and push item on lower shelf."

The respondent-carrier controverted the claim on or about October 12, 2005.

A pre-hearing order was filed on October 11, 2006. The claimant contended that she sustained a compensable injury to her lower back. The respondents contended that the

claimant did not sustain a compensable injury. The respondents contended that the claimant "failed to timely report any injury; that claimant's complaints are idiopathic and not related to a work injury; and that claimant suffers from a pre-existing condition and/or a recurrence for which respondents are not liable."

The parties agreed to litigate the following issues:

"1. Whether the claimant sustained a compensable injury on August 9, 2005. 2. Controversion."

A hearing was held on October 23, 2006. At that time, the respondents waived their notice defense.

The administrative law judge found, in pertinent part:

3. Claimant has failed to establish by a preponderance of the evidence that she suffered a compensable injury on August 9, 2005.

4. Claimant has failed to establish a compensable injury by medical evidence supported by objective findings.

The claimant, *pro se*, appeals to the Full Commission.

II. ADJUDICATION

Ark. Code Ann. §11-9-102(4) (A) 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 employee's burden of proof shall be a preponderance of the evidence. Ark. Code Ann. §11-9-102(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 did not prove she sustained a compensable injury. The Full Commission affirms this finding. The claimant did not establish a compensable injury by medical evidence supported by objective findings. We recognize that Dr. Eisenach assessed "HNP with right sciatica" on August 21, 2005. However, this assessment was not supported by any diagnostic testing via X-ray or MRI, and Dr. Eisenach did not order any such diagnostic testing. Dr. Eisenach noted on September 14, 2005 that the claimant's back exam was normal and he returned the claimant to full

duty work. There were otherwise no medical reports of swelling, bruising, spasm, or any other objective findings.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not establish a compensable injury by medical evidence supported by objective findings. The administrative law judge's decision is affirmed, and this claim is denied and dismissed pursuant to the provisions of Ark. Code Ann. §11-9-102(4)(A)(i) and following.

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 failed to prove a compensable injury, specifically that the claimant failed to establish a

compensable injury by medical evidence supported by objective findings. Based upon a de novo review of the record, I find that the claimant has met all of the required elements to prove a compensable specific incident injury. Specifically, I find that the record does contain objective medical evidence, 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 proved by a preponderance of the evidence that she sustained a specific incident injury arising out of and in the course of her employment that caused internal harm to the body and which required medical services. The claimant credibly testified that she was performing her job duties, specifically, stocking comforters, when she sustained an injury to her lower back, which caused pain in her right hip and right leg. The claimant testified that she reported the injury to her supervisor on the night it happened, and continued to notify her supervisor of the injury before every shift she had to miss due to the injury. The claimant testified that after she missed several shifts due to the injury, her supervisor finally assisted her with workers' compensation paperwork and put her on the phone with the company nurse. The

claimant testified that she described her injury to the company nurse and that the company nurse instructed the claimant's supervisor to tell the claimant to report to the St. Vincent's Family Clinic.

The medical record indicates that the claimant reported the same incident and injury to Dr. Eisenach on August 21, 2005, and that the claimant was treated by Dr. Eisenach for the work-related injury until she was released to full-duty on September 14, 2005. The record is completely devoid of any evidence indicating that the claimant had previously suffered from lower back, right hip or right leg problems. Therefore, I find that the claimant has met her burden of proving by a preponderance of the evidence that she sustained a specific incident injury arising out of and in the course of her employment that caused internal harm to the body and which required medical services.

Second, the claimant provided medical evidence supported by objective findings. "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i). Here, the claimant was instructed by the

respondent to see a doctor of the respondent's choosing, Dr. Eisenach. On August 21, 2005, Dr. Eisenach diagnosed the claimant as having a herniated nucleus pulposus, a.k.a, a herniated disc, referring to the injury as "HNP with right sciatica." Dr. Eisenach later noted that the claimant had a slipped disk. While the Majority has not disputed Dr. Eisenach's diagnosis, they have disputed the existence of objective medical findings to support his diagnosis due to the absence of an X-ray or MRI report. I find that the Majority's position lacks merit. It is the respondent who chooses the doctor to whom their employees will report for work-related injuries. Here, the respondent instructed the claimant to report to Dr. Eisenach. The respondent essentially has complete control over what diagnostic tests the doctor will have at his disposal. Here, it is apparent that the respondent declined to pay for an X-ray or MRI. However, an X-ray or MRI is not the only diagnostic testing available to Dr. Eisenach. In fact, the claimant testified that although not specifically noted in the medical records, Dr. Eisenach did perform manual diagnostic tests before diagnosing a herniated disk. It

is unreasonable to find that Dr. Eisenach would have diagnosed the claimant as having a herniated disk without any diagnostic testing. Fortunately, there is no requirement that medical testimony be expressly or solely based on objective findings, only that the record contain supporting objective findings. Swift-Eckrich, Inc. v. Brock, 63 Ark. App. 118, 975 S.W.2d 857 (1998). The Commission may not arbitrarily disregard medical evidence or the testimony of any witness. Coleman v. Pro. Transportation Inc., CA 06-525 (Ark. App. 2-7-2007). Here, Dr. Eisenach performed manual diagnostic tests and diagnosed the claimant with a herniated disc injury. The Commission cannot arbitrarily disregard Dr. Eisenach's diagnosis.

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, ___ Ark. ___, ___ S. W. 3d ___ (March 31, 2005) and Estridge v. Waste Management, 34 Ark. 276, 33 S. W. 3rd 167 (2000). Here, Dr. Eisenach treated the

claimant with Naprosyn, a nonsteroidal anti-inflammatory drug, and with an injection of Depo-Medrol, a steroidal anti-inflammatory drug. The claimant testified that the Depo-Medrol injection provided relief from her pain symptoms. Dr. Eisenach noted in his August 30, 2005 report that the claimant had a "nice response" to the Depo-Medrol injection. As such, it is evident that Dr. Eisenach was treating inflammation, which is clearly an objective medical finding. Therefore, based on Dr. Eisenach's un-controverted medical diagnosis, Dr. Eisenach's treatment of inflammation, and the above Arkansas Supreme Court decisions, I find that the claimant has produced objective medical findings of a herniated disk injury.

The Majority also erred in finding that the claimant was not entitled to any medical or permanent partial disability benefits. The claimant is entitled to all benefits associated with a compensable herniated disk injury, including additional medical treatment and benefits associated with permanent impairment. Under the Guides to the Evaluation of Permanent Impairment (4th ed. 1993), a herniated disk in the lumbar region is

entitled to a 5-7% permanent impairment rating. As such, I find that the claimant has proven by a preponderance of the evidence that she sustained a compensable work-related injury, supported by objective medical findings. Accordingly, I find that the claimant is entitled to medical and permanent partial disability benefits associated with her compensable injury.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner