

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F706709

CHARLES SADBERRY,
EMPLOYEE

CLAIMANT

WAL-MART ASSOCIATES,
EMPLOYER

RESPONDENT

CLAIMS MANAGEMENT, INC.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 28, 2008

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

Claimant represented by the HONORABLE JASON M. HATFIELD,
Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE CURTIS L.
NEBBEN, Attorney at Law, Fayetteville, 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 7, 2008. In said
order, the Administrative Law Judge made the following
findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at
the pre-hearing conference conducted on November
28, 2007, and contained in a pre-hearing order
filed November 29, 2007, are hereby accepted as
fact.
2. Th parties' stipulation that claimant earned
sufficient wages to entitle him to compensation at
the rate of \$247.00 for total disability benefits

and \$185.00 for permanent partial disability benefits is also hereby accepted as fact.

3. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury while employed by the respondent. Specifically, claimant has failed to prove by a preponderance of the evidence that there are objective findings establishing a compensable injury.

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 April 7, 2008 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 opinion. The majority, by affirming and adopting the Administrative Law Judge finds that the claimant failed to prove a compensable injury "supported by objective findings." After a de novo review of the record, I find that the claimant has proved a compensable injury supported by objective findings, and therefore, I must respectfully dissent.

The Arkansas Supreme Court has stated that muscle spasms constitute objective findings. Continental Express, Inc. v. Freeman, 339 Ark. 142 (1999). Here, the claimant introduced a cervical spine X-ray report dated July 2, 2007, which states:

FINDINGS:

The examination demonstrates right convexity scoliosis, which may be positional or secondary to muscle spasm. There is no prevertebral soft tissue swelling. Vertebral bodies and intervertebral disc spaces are normal in height and alignment. Posterior elements are intact.

The majority, by affirming and adopting the Administrative Law Judge, errs in holding that this report indicates that the scoliosis was just as likely to be a result of positioning or a congenital defect, as "secondary to muscle spasm." While the Commission has the authority to resolve conflicting evidence, including medical testimony, Foxx v. American Transp., 54 Ark. App. 115, 924 S.W.2d 814 (1996), the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. Coleman v. Pro-transportation, ___ Ark. App. ___, ___ S.W.2d_____, (2007). The claimant testified that his back was painful and tight while he was being x-rayed. There is no evidence of record indicating that the claimant has received medical treatment in the past for his cervical spine. The claimant testified that he has never been told that he has scoliosis. Therefore, I find it to be highly unlikely that the findings on the x-ray films are a result of a congenital defect. I also find it to be

highly unlikely that the x-ray results are evidence of improper positioning during the exam. Conjecture and speculation, which, even if plausible, cannot take the place of proof. Ark. Dept. of Correction v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991). Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979). Arkansas Methodist Hospital v. Adams, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

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.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, *Supra*. Here, the claimant was prescribed both a nonsteroidal anti-inflammatory and a musculoskeletal muscle relaxant on the date of the injury. On the second visit, the claimant was prescribed another round of

anti-inflammatory and muscle relaxants, with an additional prescription for pain medication. Although the physician's assistant who initially treated the claimant testified in a deposition that the claimant did not necessarily have muscle spasms, and that the Flexeril could have been prescribed for a "soft tissue injury", I do not find the physician's assistant's testimony to be credible in light of the fact that the physician's assistant actually diagnosed the claimant with a cervical strain, not a "soft tissue injury." Therefore, I find that the claimant has presented "objective findings" of a compensable cervical injury, and the majority has clearly erred.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner