

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F609152

ADAN SANTAMARIA, EMPLOYEE

CLAIMANT

OK INDUSTRIES, A SELF INSURED EMPLOYER

RESPONDENT

**OPINION FILED JULY 28, 2008**

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

Claimant represented by HONORABLE JAMES FILYAW, Attorney at Law, Fort Smith, Arkansas.

Respondent represented by HONORABLE SCOTT ZUERKER, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal a decision of the Administrative Law Judge filed on May 15, 2007, finding that the claimant proved by a preponderance of the evidence that he sustained an injury to his back on February 23, 2006. Based upon our de novo review of the record, we find that the claimant has failed to meet his burden of proof. Accordingly, we reverse the decision of the Administrative Law Judge.

The claimant was employed by the respondent employer as a machine operator. The claimant testified that

on February 23, 2006, he was stacking some boxes when he felt a pull in his back. The claimant sought treatment from the nurse for the respondent employer. He was ultimately referred to Dr. Keith Holder at the Cooper Clinic when he did not get any better. The claimant was diagnosed with a compression fracture in his cervical spine. The Administrative Law Judge found that the claimant proved by a preponderance of the evidence that he sustained a compensable injury to his back. The Administrative Law Judge stated in her opinion:

Although Dr. Holder clearly sets forth in his opinion this compression fracture was not as a result of his working for the respondent but due to a preexisting condition, it is also noted that Dr. Holder diagnosed the claimant with having cancer which Dr. Johnson has clearly said he does not have.

After reviewing the evidence impartially, without giving the benefit of the doubt to either party, we cannot find that the Administrative Law Judge's interpretation of that medical record is correct. In a medical narrative dated March 23, 2006, Dr. Holder stated:

PLAN:

1. We will refer to Dr. Johnson at River Valley for a Neurosurgical evaluation.
2. May return to work with previous restrictions. No lifting over 20 pounds. No climbing ladders. No repetitive motions to the right shoulder. Causation secondary to the patient's report of injury, and the investigation by the company, he doesn't have a significant axial load, which would have aggravated his underlying condition. This activity of daily lifting which he had performed and it was in his normal scope of duties.
3. I do not feel like this led to this compression fracture of C6 vertebral body nor the positive bone scan findings.

Dr. Holder, in his physical examination portion of the narrative summary states:

...He did have a hot spot in the vertebral body of C6 where a compression fracture was noted on MRI. The **Radiologist** suspected that it is a possible metastatic disease, possibly from a thyroid cancer.

In our opinion, Dr. Holder did not conclude that the claimant had cancer. The claimant is Hispanic and he does not speak English. In fact, he testified during the hearing

and at his deposition through an interpreter. After reviewing the radiology report for the MRI on March 13, 2006, Dr. Holder requested a bone scan to rule out any malignancy. Dr. Holder ultimately diagnosed the claimant with a compression fracture at C6.

Ark. Code Ann. § 11-9-102(4)(A)(i) (Supp. 2005) defines "compensable injury" as "[a]n 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." Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002). The phrase "arising out of the employment refers to the origin or cause of the accident," so the employee was required to show that a causal connection existed between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985).

Objective medical evidence, while necessary to establish the existence and extent of an injury, is not essential to establish a causal relationship between the injury and the work related accident. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. App. 443, 990 S.W.2d 522 (1999). Except in the most obvious cases where causation is established through common sense observation and deduction, the existence of a causal relationship may require the assistance of expert medical evidence. Cotton v. Ball & Prier, Full Commission Opinion, September 23, 1997 (Claim No. E512437); Jeter v. B & R McGinty Mechanical Co., Full Commission Opinion, March 6, 1997 (Claim No. E208256), Affirmed by the Court of Appeals, See, Jeter v. B & R McGinty Mechanical Co., 62 Ark. App. 53, 968 S.W.2d 645 (1995); and Jackson v. Bosley Construction, Inc., Full Commission Opinion, March 6, 1997 (Claim No. E009401). "To be sure, there will be circumstances where medical evidence will be necessary to establish that a particular injury resulted from a work-related incident but not in every case." Van Wagner, supra. The Commission has a duty to translate

the evidence on all the issues before it into findings of fact. The Commission need not base a decision on how the medical profession may characterize a given condition, but rather primarily on factors germane to the purposes of the Workers' Compensation Law. Weldon v. Pierce Brothers Construction Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996). The Commission is never limited to medical evidence in arriving at its decision. Further, The Commission is not bound by a doctor's opinion which is based largely on facts related to him by claimant where there is no sufficient independent knowledge upon which to corroborate claimant's claim. Roberts v. Leo Levi Hospital, 8 Ark. App. 184, 649 S.W.2d 402 (1983). The Commission has the duty of weighing the medical evidence as it does any other evidence, and the resolution of any conflicting medical evidence is a question of fact for the Commission to resolve. CDI Contractors v. McHale, 41 Ark. App. 57, 848 S.W.2d 941 (1993). It is well established that the determination of the credibility and weight to be given a witness's testimony is within the sole province of the Workers' Compensation Commission; the

Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. Wal-Mart Stores, Inc. v. Sands, 80 Ark. App. 51, 91 S.W.3d 93 (2002). The Commission has the duty of weighing the medical evidence as it does any other evidence, and its resolution of the medical evidence has the force and effect of a jury verdict. Id.

It is undisputed that the only doctor who addressed causation is Dr. Holder. He unequivocally stated that the lifting event described by the claimant did not cause an axial load of sufficient force to cause a compression fracture at C6. Simply put, the mechanics of the injury as described by the claimant could not have led to the resulting condition. We give Dr. Holder's opinion greater weight. Therefore, based upon the opinion of Dr. Holder, the claimant's treating physician, we find that the claimant has failed to prove by a preponderance of the evidence that he sustained a compression fracture in the

course and scope of his employment. Accordingly, we reverse the decision of the Administrative Law Judge.

Even if we totally disregarded the opinion of Dr. Holder as the Administrative Law Judge has, we would still find that the claimant could not prove a causal connection between his compression fracture and his work. In his deposition, the claimant testified that he never had problems with his neck, back, or spine prior to February 23, 2006. However, the claimant admitted to Dr. Holder that he had prior problems with his neck in 2003. He ultimately admitted that he had seen the plant nurse prior to February 23, 2006, for pain in his neck and that he had been to the medical clinic at the mall prior to that date for spinal problems. In our opinion, the claimant was suffering from the same types of problems prior to the alleged injury that he suffered on February 23, 2006. In this regard, the medical records speak for themselves.

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, we find the claimant has failed to establish the elements necessary to prove a compensable injury by a preponderance of the evidence.

Therefore, for all the reasons set forth herein, we find that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury on February 23, 2006. Accordingly, the opinion of the Administrative Law Judge is hereby reversed and this claim is denied and dismissed.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority's opinion. The majority, by reversing the Administrative Law

Judge, finds that the claimant failed to prove by a preponderance of the evidence that he sustained an injury to his neck on February 23, 2006. Based upon a de novo review of the record, I find that the claimant has met his burden of proof by a preponderance of the evidence for a compensable specific incident cervical spine injury on February 23, 2006 and is entitled to all reasonable and necessary medical treatment at respondent's expense, as well as temporary total disability from March 30, 2006 to April 26, 2006, and therefore, I must respectfully dissent.

On February 23, 2006, the claimant was stacking compressed pallets of boxes weighing 25-30 pounds, an activity which required lifting the compressed pallets to eye-level and above. The claimant testified that as he was stacking the compressed boxes, he felt a sharp pain in his neck. The claimant sought treatment from the nurse for the respondent employer. The initial nurse report states:

02/27/06

C/O Pain in neck down to RT scapula.  
States when he went home on Friday  
became worse. States he felt too bad to  
come and see me Saturday like I  
requested. States in too much pain to

even get out of bed and come to work today. Went to the Dr. instead. Drs. Office instructed him to come to work and see me...

The respondent referred the claimant to Dr. Keith Holder. Dr. Holder's initial report, also dated February 27, 2006 states:

This is the initial narrative summary of Mr. Santamaria, an employee of OK Foods who reports he was lifting a pallet overhead on the 23<sup>rd</sup> of February, approximately 7:15 a.m., when he felt a sharp pain in his right neck that has gotten worse with inability to rotate his neck since then. The pallet weighed approximately 20-25 pounds. He continued with work with the pain for the next few days with the pain increasing, now at a level of 9/10. Pulling sensation in the right trapezius and cervical area, noticed increase with deep breathing, rotating the head. He has used ice and heat and pain medications which have not helped.... Cervical spine x-ray shows no acute bony injury.  
Diagnosis: Right trapezius strain vs. disc protrusion to the right at C5-C6.  
Treatment Plan: Physical therapy three times a week for two weeks. Ultram 50 milligrams one to two po q.i.d. Skelaxin 400 milligrams one to two po q.i.d....

On March 13, 2006, the claimant underwent an MRI of the cervical spine. The MRI report states:

...Compared to the plain radiograph from February 27, 2006. There is abnormal signal intensity within the C6 vertebrae, T1 and inversion recovery sequences and mild inferior end plate deformity/Schmorl's node deformity. No significant disc bulge C2-3, C3-4, C4-5 demonstrating mild diffuse disc bulge and mild diffuse disc bulge at C5-6. There is also mild diffuse disc bulge at C6-7.

IMPRESSION:

Abnormal signal intensity within the C6 vertebra with a mild inferior end plate compression/Schmorl's type node. This could represent acute compression fracture but a pathologic fracture is to be considered in view of the abnormal signal intensity diffusely within the vertebral body. Bone scan may be helpful and also CT may be helpful to determine if there are lytic changes....

Regarding the MRI results, on March 17, 2006,

Dr. Holder wrote:

MRI: MRI revealed a defect in the mild inferior end plate with compression of Schmorl's type node. The radiologist reported this could represent acute compression fracture but a pathological fracture is to be considered in view of the abnormal signal intensity diffusely within the vertebral body....

Impression: C6 mild compression fracture through is Schmorl's node. Rule out malignancy.

Treatment plan: A bone scan is rescheduled on 03/23/2006.

On March 23, 2006, Dr. Holder wrote:

FINAL NARRATIVE SUMMARY.

HISTORY:

He reports back after having a bone scan today. His neck continues to give him pain. It is decreased with Panlor. The pain is increased with movement.

CURRENT MEDICATIONS:

Ultracet and Panlor.

PHYSICAL EXAMINATION:

On examination, 28-year-old Hispanic male. Blood pressure is 140/94, pulse is 78, respirations are 14. No physical exam was performed today. I discussed the findings of the bone scan performed today. He was referred here by the Radiologist and placed in a cervical collar. He did have a hot spot in the vertebral body of C6 where a compression fracture was noted on MRI. The Radiologist suspected that it is possible metastatic disease, possibly from a thyroid cancer.

PLAN:

1. We will refer to Dr. Johnson at River Valley for a Neurosurgical evaluation.
2. May return to work with previous restrictions. No lifting of over 20 pounds. No climbing ladders. No repetitive motions to the right shoulder. Causation secondary to the patient's report of injury, and the investigation by the company, he doesn't

have a significant axial load, which would have aggravated his underlying condition. This activity of daily lifting which he had performed and it was in his normal scope of duties.  
3. I do not feel like this led to the compression fracture of C6 vertebral body nor the positive bone scan findings.

Dr. Holder referred the claimant to Dr. Arthur Johnson for follow-up. The claimant saw Dr. Johnson on March 30, 2006. On that date, Dr. Johnson wrote:

IMPRESSION: Probable Schmorl's node in the cervical spine at C6, however, we must rule out any other lesion such as tumor or multiple myeloma....We will also get a cervical spine MRI scan with contrast to check for any enhancement. We will have him continue to wear a cervical collar. We will see him back in the clinic after these X-ray and lab studies have been performed.

Dr. Johnson's April 10, 2006, report states:

MRI CERVICAL SPINE:  
Comparison is made to prior MRI done at Cooper Clinic of date of 3/13/2006. That is the delay in reading this MRI. Performed with and without intravenous gadolinium. Signal abnormality within the vertebral body of C6 again noted which is unchanged since the prior MRI. This is of hypointense signal on the T1

weighted images and slightly isointense signal on the T2 weighted images. Schmorl's nodule on the inferior end plate of C6 again noted. The signal abnormality within the spinal cord is identified. The degree of bulging annulus at C4-C5, C5-C6 and C6-C-7 levels are unchanged since the prior MRI.

IMPRESSION:

1. No significant change in the signal intensity within the vertebral body of C6 with a Schmorl nodule in its inferior end plate. I do recommend at this point further correlation with bone scan and CT scan through that area.

On April 27, 2006, Dr. Johnson wrote:

The patient is seen in followup for compression fracture of C6. He is actually doing reasonably well. He still has some neck pain but is not having a significant amount. He is ambulating without significant difficulty....His repeat MRI scan was unchanged from the previous MRI scan and also the bone scan did show an increased uptake in the area of C6, which is most consistent with a compression fracture type lesion.

IMPRESSION: Compression fracture of C6. At this point there is no evidence of tumor or other abnormalities identified. We will see him back in the clinic in approximately three months and get an MRI scan with contrast in about three months to see if there has been any particular change in this lesion. Also,

we gave him a prescription for Lortab p.r.n. for pain.

The Administrative Law Judge stated:

After a complete review of this case, I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his cervical spine on February 23, 2006 while working for the respondent. The claimant has testified that he was lifting a box of boxes weighing approximately twenty-five to thirty pounds over his head when he felt a pull or a snap in his neck and immediate pain which he reported to his supervisor and received conservative treatment from the plant nurse on that day. The claimant testified that he reported back to the nurse the next day with his continuing complaints of pain and again was treated by the plant nurse. The claimant's testimony is that when he came into work on Monday, he again reported to the plant nurse his neck problems at which time he was sent to the company doctor, Dr. Holder. Tests were run and it was eventually discovered that the claimant had a compression fracture at the C6 level. Although Dr. Holder clearly sets forth in his opinion this compression fracture was not as a result of his working for the respondent, but due to a preexisting condition, it is also noted that Dr. Holder diagnosed the claimant with having cancer which Dr. Johnson has clearly said he does not have. I find, therefore, that the respondents should

pay for all reasonable and necessary medical treatment for the claimant's compensable cervical problems as well as pay him TTD from March 30, 2006, to April 27, 2006, which are the dates Dr. Johnson had him off work awaiting lab work and an MRI.

The majority, reversing the Administrative Law Judge's award of benefits, stated:

It is undisputed that the only doctor who addressed causation is Dr. Holder. He unequivocally stated that the lifting event described by the claimant did not cause an axial load of sufficient force to cause a compression fracture at C6. Simply put, the mechanics of the injury as described by the claimant could not have led to the resulting condition. We give Dr. Holder's opinion greater weight.

I find that the majority, in reversing the Administrative Law Judge's determination that the claimant is entitled to benefits for a cervical injury sustained on February 23, 2006 has erred. 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. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Here, it is undisputed that the claimant's cervical spine contains a Schmorl's node and a compression fracture of the C-6. Dr. Holder opined that the claimant's lifting duties did not cause the compression fracture, nor did they cause the "increased signal." However, what has been missed, in the understandable focus on the discovery of the possibility of a very serious medical condition for the

claimant, i.e., cancer, is that in addition to having the compression fracture, the claimant also sustained a compensable cervical injury at work on February 23, 2006. The claimant's initial MRI reports, in addition to showing the "abnormal signal intensity" that was ultimately diagnosed as a non-acute compression fracture, showed disc bulges at C5-6 and C6-7. Dr. Holder, before viewing the MRI results, had in fact, initially diagnosed the claimant, through the claimant's report of the incident and physical examination of the claimant, as having a cervical injury, specifically, disc protrusion to the right at C5-6. The discovery of the compression fracture, while it obviously warranted follow-up, did not cancel out the fact that the claimant sustained a compensable cervical injury, disc protrusions at C5-6 and C6-7 on February 23, 2006, during the specific incident at work.

I also find that the Administrative Law Judge was correct in awarding reasonable and necessary medical treatment and temporary total disability benefits for the claimant's compensable cervical injury. Injured employees

must prove that medical services are reasonably necessary by a preponderance of the evidence; however, those services may include that necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2002); Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995). Dr. Holder referred the claimant to Dr. Johnson for follow-up of the compression fracture identified by the initial MRI. However, Dr. Holder also continued treating the claimant for the symptoms associated with the claimant's compensable cervical injury, with Ultracet and Panlor. Dr. Holder, in addition to treating the symptoms of the claimant's cervical injury with Lortab, recommended additional testing to accurately diagnose the nature and extent of the claimant's injury. Dr. Holder took the claimant off work for the duration of these tests, and is entitled to temporary total disability benefits.

Furthermore, I would also note that the majority's determination that the claimant is not credible, in addition to being extraneous, is not supported by the evidence of record. There are no discrepancies in the claimant's testimony or in the medical records. The claimant credibly testified about the specific incident at work which caused his neck strain. The claimant testified that he immediately reported the incident to his supervisor and the company nurse. The respondent has presented no testimony, witness or medical, contradicting the claimant's testimony. The claimant testified in his deposition that he had seen a nurse in the past for minor back pain. The claimant testified the same at the hearing. The nursing records introduced by the respondent support the claimant's testimony about his prior treatment for minor back pain. As such, the majority's conclusion regarding the claimant's credibility is clearly erroneous.

In conclusion, I find that the claimant has met his burden of proof by a preponderance of the evidence for a compensable specific incident cervical injury on

February 23, 2006 and is entitled to all reasonable and necessary medical treatment for his compensable injury as well as temporary total disability benefits from March 30, 2006 to April 26, 2006.

For the aforementioned reasons, I must respectfully dissent.

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PHILIP A. HOOD, Commissioner