

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F600749

MICHAEL SERNA,
EMPLOYEE

CLAIMANT

SYSTEMS CONTRACTING,
EMPLOYER

RESPONDENT

INTEGRATED CLAIMS MANAGEMENT,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JUNE 24, 2008

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

Claimant represented by the HONORABLE RICHARD A. REID,
Attorney at Law, Blytheville, Arkansas.

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

Decision of Administrative Law Judge: Affirmed in
part/reversed in part.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed November 5, 2007. The administrative law
judge found that the claimant sustained an injury arising
out of and in the course of his employment with the
respondents. After reviewing the entire record *de novo*, the
Full Commission affirms the administrative law judge's
findings, in part, and reverses, in part. We find that the

claimant proved he sustained a compensable injury to his right knee. The claimant did not prove that he sustained a compensable injury to his back.

I. HISTORY

Michael Joseph Serna, age 32, testified that he was working as a pipefitter for Systems Contracting in September 2005. The parties stipulated that the employment relationship existed at all pertinent times, including September 21, 2005. The claimant testified that he sustained an accidental injury: "I was down at sublevel of the actual plant....There was a small - I'd say it was maybe two feet wide running the length of the floor. It was a water drainage. It was made of concrete....The next thing I remember is falling sort of at an angle forward into the trench....I remember hitting it with my right knee. At that point, and feeling the pain shoot up my leg and into my back, and I ended up sort of leaning, sort of squatting and kind of leaning inside of it, and that's where I ended up."

The claimant treated at Great River Medical Center on September 21, 2005. The claimant reported that he lost balance, fell, and hit his knee on a concrete slab. The claimant reported that the pain was radiating from the knee

to the hip and back. An Emergency Physician Record on September 21, 2005 indicated that the claimant had fallen onto his right knee. The physician's clinical impression was contusion to the right knee and lumbar strain. According to an Abstract Summary Form, the principal diagnosis at that time was "sprain lumbar region." The secondary diagnoses included "contusion of knee" and "sciatica."

Radiological findings on September 21, 2005 showed that the claimant had a normal lumbar spine. No significant bony pathology was identified in the claimant's right hip, right knee, or right femur.

The claimant presented to Dr. Alan Irwin on April 18, 2006:

This 29 year old male is here with complaint of back pain and asking me to fill out papers for FMLA. The history is all per patient's verbal report as I don't have any records from him on any of this. He states that in September 2005 he sustained a back injury while working as a welder in Arkansas. He was standing next to a canal and fell toward the canal striking his low back on a ledge....His back pain is low lumbar bilateral pain and pain in the sacroiliac joint area bilaterally. It radiates sometimes into the buttocks and sometimes around to the anterior thighs and about halfway down to the knee bilaterally....He also tells me that he has never had any imagining (sic) performed on his spine

other than x-rays done acutely in the ER on Arkansas on the day of his injury.... Exam of the back does not reveal any obvious deformity, vertebral point tenderness or muscle spasm....I told him from a medical standpoint the history he is giving me indicates he needs to have his chronic back pain worked up with an MRI of the lumbosacral spine. Based on the results of this, the treatment will involve nonsteroidal anti-inflammatory drugs, possible PT, as well as a referral to a pain specialist who may provide injections of either nerve blocks or steroids. If the MRI results indicate surgical consultation is warranted, I will refer him to a spine surgeon for same....

Dr. Irwin assessed "Chronic lumbar back pain with radiculopathy. We will get an MRI of the lumbosacral spine. Referral to Dr. Booth for pain management."

A pre-hearing order was filed on May 1, 2007. The claimant contended, among other things, that "while working in a highly congested area, he slipped and fell into an open trench approximately two feet deep, with the fall resulting injury (sic) to his back and legs....Claimant is seeking additional medical care and would appreciate being referred to a doctor for examination, so as to determine his present condition." The respondents contended that the claimant "reported a low back and a knee injury. This claim was litigated in Missouri, but Missouri apparently dismissed it for lack of jurisdiction. There are no objective medical

findings and the claimant did not injure himself on the job."

The administrative law judge scheduled a hearing "on the issues of compensability (medical benefits) and controverted attorney fees."

A hearing was held on August 17, 2007. The claimant testified regarding the condition of his back, "As long as I don't do anything to aggravate it, I can function." The claimant testified on cross-examination that the pain was in his back: "It starts in the small of my back, and then it wraps around the hips as the pain progresses and I'm, you know, standing or - or even standing in line at the grocery store, and that will progress down to my knees. That's about as far as it goes, but by that time, my legs will barely support me. I have to sit down, lay down, something. Otherwise I'm going to fall."

The administrative law judge found, in pertinent part:

4. On September 21, 2005, the claimant sustained an injury arising out of and in the course of his employment with respondent.

5. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of September 21, 2005.

The respondents appeal to the Full Commission.

II. ADJUDICATION

Ark. Code Ann. §11-9-102(4) (A) (Repl. 2002) 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 claimant's burden of proof shall be a preponderance of the evidence. Ark. Code Ann. §11-9-102(4) (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).

An administrative law judge found in the present matter, "On September 21, 2005, the claimant sustained an injury arising out of and in the course of his employment with the respondent." The Full Commission affirms the administrative law judge's finding with regard to the right knee. The claimant testified that he slipped and fell on

his right knee at work on September 21, 2005. The initial emergency report corroborated the claimant's testimony that he slipped, fell, and hit his knee. A physician's impression was contusion to the right knee and lumbar strain. The physician's impression appears to have been based on a physical examination of the claimant's right knee. A report of "contusion" can constitute an objective medical finding. *See, Bryant v. Staffmark*, 76 Ark. App. 64, 61 S.W.3d 856 (2001).

The Full Commission finds that the claimant sustained an accidental injury causing physical harm to his right knee on September 21, 2005. The accidental injury arose out of and in the course of the claimant's employment and required medical services. The injury was caused by a specific incident and was identifiable by time and place of occurrence on September 21, 2005. The claimant established a compensable injury to his right knee by medical evidence supported by objective findings not within the claimant's voluntary control, namely, the physician's report of "contusion" to the claimant's right knee. The claimant did not prove that he sustained a compensable injury to his back. The record before us contains no medical evidence

supported by objective findings establishing a compensable injury to the claimant's back. We specifically interpret the ER record to read "tender @ (L) side of low back and buttock." There is no check in the muscle spasm section right above this notation. The radiological findings on September 21, 2005 explicitly identified no bony pathology to the claimant's lumbar spine, right hip, right knee, or right femur. Dr. Irwin noted, "Exam of the back does not reveal any obvious deformity, vertebral point tenderness or muscle spasm."

Based on our *de novo* review of the entire record, the Full Commission affirms the administrative law judge's finding that the claimant sustained an injury arising out of and in the course of his employment. The Full Commission finds that the claimant proved he sustained a compensable injury to his right knee. The claimant did not prove that he sustained a compensable injury to his back. The claimant did not prove that any of the treatment of record beginning April 18, 2006 was reasonably necessary in connection with his compensable right knee injury. For prevailing on appeal, the claimant's attorney is entitled to a fee of five

hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood concurs & dissents.

CONCURRING AND DISSENTING OPINION

I must respectfully concur & dissent from the majority's opinion. Specifically, while I agree with the majority's finding that the claimant proved a compensable specific incident knee injury, I disagree with the majority's finding that, due to lack of objective medical findings, the claimant failed to prove a compensable specific incident back injury arising out of the same specific incident. 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 back injury. Specifically, I find that the record does contain objective medical evidence of

the claimant's compensable back injury 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).

On September 21, 2005, while working as a pipe-fitter for the respondent, the claimant fell into a trench, hitting his knee. The claimant testified that he immediately felt pain shoot up his leg and into his back. The claimant treated at Great River Medical Center where he reported the incident and the pain shooting from his knee to his back. The majority has found, based on the claimant's testimony and the corroborating medical record that the claimant has established all of the elements of a compensable specific injury for the knee, however, he lacked objective findings of a back injury. I find that the majority has erred.

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). The majority correctly notes that the ER record dated September 21, 2005 indicates that the claimant is "tender at left side of low back and buttock." Furthermore, the ER discharge summary from the

same date clearly shows that the ER doctor, Dr. Joseph Patterson, diagnosed the claimant as having a knee contusion and a lumbar strain, related to a "fall, accidental." 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., ___ Ark. App ___, ___ S.W. 3d. ___ (2007).

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, the ER discharge summary from the date of injury clearly shows that the claimant was treated with Flexeril. As Flexeril is prescribed for muscle spasms, not bruises, logic dictates a finding that the claimant was given

Flexeril for spasms in his back, not for his bruised knee. Therefore, I find that the claimant has proved by a preponderance of the evidence, supported by objective findings, a compensable back injury sustained in the same incident that caused the claimant's compensable knee injury.

In conclusion, I find that in addition to proving a compensable knee injury, the claimant has also proved by a preponderance of the evidence, supported by objective findings, all of the elements of a specific incident back injury.

For the aforementioned reasons, I must respectfully concur & dissent.

PHILIP A. HOOD, Commissioner