

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F600824 & F611412

ANN BOWMAN, EMPLOYEE	CLAIMANT
BOAR'S HEAD PROVISIONS COMPANY, EMPLOYER	RESPONDENT NO. 1
AMERICAN ZURICH INSURANCE CO., CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED MARCH 17, 2009

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

Claimant is not represented by counsel, but appears *pro se*.

Respondent No. 1 represented by HONORABLE ERIC NEWKIRK, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by HONORABLE JUDY RUDD, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

Respondent No. 1 appeals a decision by the Administrative Law Judge finding that the claimant proved by a preponderance of the evidence that she sustained compensable injuries on January 18, 2006 and October 4, 2006, and awarding additional benefits in the form of medical treatment, temporary total disability benefits and benefits pursuant to Ark. Code Ann. §11-9-505. Based upon our de novo review of the record, we find that the claimant has

Bowman
F600824 & F611412

-2-

failed to prove by a preponderance of the evidence that she sustained compensable injuries on January 18, 2006 and October 4, 2006. We also find that even if the claimant can prove she sustained a compensable injury, either on January 18, 2006 or October 4, 2006, she has failed to prove that she is entitled to benefits pursuant to Ark. Code Ann. §11-9-505.

The claimant was employed by the respondent employer as a Quality Assurance Technician. The claimant's job duties required "going to the department behind the station monitoring, making sure they were running the right sell by date, checking the products, and... inspecting the products." The claimant was also responsible for handling a significant amount of sensitive information which required honesty and integrity at all times. On January 18, 2006, the claimant slipped on some ice and fell. The respondents initially accepted the claimant's injury and paid for medical treatment. The claimant sought treatment from Dr. Sudesh Banji the following day where she reported pain in the left side of her neck. Dr. Banaji noted only

Bowman
F600824 & F611412

-3-

tenderness in the claimant's paraspinal neck muscle area and released the claimant to return to work on January 20, 2006. On January 22, 2006, the claimant sought treatment from the Cross Ridge Community Hospital complaining of left shoulder pain. X-rays were taken of the claimant's left shoulder, which did not reveal any evidence of a fracture, dislocation or abnormality.

The claimant returned to work on January 24, 2006 and resumed her regular job duties. She returned to Dr. Banji again on January 26, 2006, for complaints in her neck, back and left shoulder. Dr. Banji remarked that the claimant had "good lumbar flexion, both AP and lateral[.] Shoulder movements are normal." Dr. Banji also took x-rays of the claimant's C-spine, T-spine, and chest. All of these x-rays were normal. He released the claimant to return to work on January 30, 2006.

The claimant failed to return to work and returned to Dr. Banaji on February 1, 2006. Again, Dr. Banaji released the claimant to return to work. The claimant did not agree with Dr. Banaji's assessment so he referred her to

Bowman
F600824 & F611412

-4-

Dr. Mark S. Harriman to be evaluated. The claimant saw
Dr. Harriman on February 2, 2006, and he reported:

PI: Ms. Long of Boars Head has asked me to take a look at Ms. Bowman who is 34 years old and is a lab tech at Boars head in Forrest City. She denies previous injuries and had a fall on January 18th when she slipped on some ice. Apparently she found herself on her back and was able to get up and walk. She initially had complaints in pain in the left ribs. I have reviewed records from her treatment which is by an internal medicine specialist in Forrest City and I have also seen some x-ray reports which indicated negative thoracic spine, negative chest and negative C spine.

PE: She presents today a healthy appearing, cooperative black female, 5"3", 159 pounds, BP 133/81. Just to be thorough, I did a good exam of her neck and back and she has excellent motion in those areas, no pain or complaints. Her reflexes and strength are normal in the upper and lower extremities. The left ribs are tender, but I don't feel crepitation. The tenderness is basically anterolateral. There is a slight prominence of the left ribs which is most likely congenital and not traumatic.

X-RAYS: Left rib detail films were taken in the office today and I see no abnormalities.

Bowman
F600824 & F611412

-5-

IMPRESSION: She may have had a neck and back strain initially, but has no residuals from this. Otherwise, she has had a fib strain which really doesn't require treatment and I believe the symptoms that she is having will resolve rather rapidly.

Dr. Harriman released the claimant to return to work. The claimant returned on February 8, 2006, and continued to seek treatment from Dr. Harriman.

On February 26, 2006, the claimant sought treatment from Dr. Harriman. She reported that she was no longer suffering from pains in her neck, back, left shoulder, and ribs, but she was now hurting in a "new location." Specifically, Dr. Harriman noted that he claimant had "pain in the sternal area superiorly. She no longer has the pain down in the lower left ribs. Dr. Harriman again released to full duty but did recommend a whole body bone scan.

The claimant underwent the full body scan on March 2, 2006, which revealed "mild osteoarthritis most notable in the ankles. Otherwise negative." In a report dated March 7, 2006, Dr. Harriman stated:

Bowman
F600824 & F611412

-6-

...Says she is having a lot of chest pain. I have explained to her that her bone scan was normal, as far as her chest wall is concerned. Her bone scan did show some degenerative changes in the knees and ankles, but she has no symptoms there. I have advised her today that I do not find any evidence of any significant ongoing problems from her on the job injury. I have advised her to see her regular physician to make sure that her chest pain is not being caused by some type of medical problem, specifically her heart. Otherwise, she is released to full duty at maximum, medical improvement, no restrictions, no impairment.

The claimant continued working her regular job duties. Not satisfied with her release from Dr. Harriman, the claimant requested a change of physician to Dr. Thomas Hart. On May 12, 2006, the claimant saw Dr. Hart and complained of pain in her left neck. Dr. Hart ordered an MRI of the claimant's cervical and upper thoracic spine but did not prescribe any medication or take the claimant off work. The claimant underwent the MRI and on May 22, 2006, Dr. Hart recommended that the claimant undergo diagnostic left cervical left facet injections to assist in the establishment of a diagnosis. Dr. Hart also recommended that

Bowman
F600824 & F611412

-7-

the claimant see an endocrinologist for her enlarged thyroid. Again, Dr. Hart did not prescribe any medication nor did he take the claimant off work.

The respondents denied the treatment recommendations of Dr. Hart and scheduled the claimant for an independent medical evaluation with Dr. Steven L. Cathey. On October 4, 2006, one day prior to her appointment with the Dr. Cathey, the claimant again slipped on some ice and allegedly injured her left knee and left side of her chest. She sought treatment from Dr. Sudhir Kumar who stated that the claimant had a "left neck sprain, left knee pain, left chest pain, secondary to fall." He released the claimant to return to work on October 9, 2006.

The claimant saw Dr. Cathey on October 5, 2006. Dr. Cathey opined that the claimant had suffered a musculoskeletal injury that should resolve without specific treatment. He also opined that any facet hypertrophy would not be in any way related to the claimant's fall on January 18, 2006. He did not take the claimant off work nor restrict her activities. He wanted the claimant to undergo

Bowman
F600824 & F611412

-8-

another MRI. On October 30, 2006, the claimant underwent the MRI and Dr. Cathey reported in his clinic note:

HISTORY: Ms. Bowman returns today for follow up. She is still experiencing chronic neck and upper back pain that she relates to an occupational injury suffered in January of this year. Her symptoms have not changed significantly since her initial visit here on October 5, 2006.

PHYSICAL EXAMINATION: Her neurological examination remains negative. There is specifically no sign of cervical myeloradiculopathy.

The patient and I reviewed an MRI scan of her cervical spine obtained earlier today. For what ever reason, she has still been unable to capture the original studies from May of 2006.

Today's study is entirely negative. She specifically does not have any evidence of cervical disc herniation, spinal stenosis, nerve root entrapment, compression fracture, etc.

ASSESSMENT/PLAN: It is still my opinion that Ms. Bowman has suffered a musculoskeletal injury that should go on and resolve without specific treatment. I therefore do not see an indication to proceed with diagnostic facet blocks, facet rhizotomy, etc.

Bowman
F600824 & F611412

-9-

Dr. Cathey released the claimant to be seen on a p.r.n. basis.

The claimant continued working full duty for the respondent employer. On November 1, 2006, she again sought treatment from Dr. Kumar complaining of left neck pain. Dr. Kumar advised the claimant not to lift more than ten pounds but he did not take the claimant off work.

On November 7, 2006, the claimant saw Dr. Kumar complaining of left knee pain which "started yesterday when she woke up in the morning, at work her knee gave away and she had to be wheeled out at work, hardly able to walk, using crutches, claims this pain started in the past when she fell...." Dr. Kumar noted: "Left knee pain, etiology unknown." Dr. Kumar released the claimant to return to full duty work the following day. On November 9, 2006, an MRI was performed on the claimant's knee which was normal. Dr. Kumar again released the claimant to return to work.

The claimant, on her own, sought treatment from Dr. Ashley Park on January 10, 2007. Dr. Park, a pain management specialist, recommended that the claimant undergo

Bowman
F600824 & F611412

-10-

"reversible branch blocks at the cervical facet joints which will serve both as a diagnostic tool..." Dr. Park did not take the claimant off work.

The respondents denied the recommended treatment of Dr. Park. The claimant continued working for the respondent employer performing all her assigned duties. In June of 2007, the claimant learned that the respondent employer was hiring temporary summer help. The claimant was trying to get her son Kellon Bowman a job. An application was completed but it was the wrong application for a temporary position. The claimant was advised of the problem and told to submit a correct application. Another application was completed and turned in to the respondent employer by the claimant.

Loretta Ratchford, the respondent employer Human Resources Coordinator, offered testimony at the hearing regarding the application completed by the claimant's son for temporary employment. According to Ms. Ratchford, she had the claimant's son come in and complete a interview sheet. Upon review of the application and the interview

sheet, Ms. Ratchford noticed a discrepancy in the signatures. The signature on the application did not match the signature on the interview sheet. Ms. Ratchford immediately conferred with Gillette Drone, the respondent employer Human Resource Manager, who also testified at the hearing. Ms. Ratchford and Ms. Drone confronted the claimant about the discrepancy in the signatures and the claimant repeatedly denied completing her son's application. The claimant eventually admitted to completing the application but denied signing it. The claimant's son admitted during his interview that it was not his signature on the application. The claimant was terminated on June 5, 2007, for falsifying statements and documents provided to the respondent employer.

The respondents initially accepted the claimant's injuries as medical only but eventually denied them for lack of objective findings. Following her termination from the respondent employer, the claimant filed a claim seeking additional medical treatment, temporary total disability benefits and benefits pursuant to Ark. Code Ann. §11-9-505.

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 is required to show that a causal connection exists between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). An injury occurs "in the course of employment" when it occurs within the time and space boundaries of the employment, while the employee is carrying out the employer's purpose, or advancing the employer's interest directly or indirectly. City of El Dorado v. Sartor, 21 Ark. App. 143, 729 S.W.2d 430 (1987).

In addition to establishing the general requirements for compensability set forth in §11-9-102(4)(A)(i), the claimant must establish a compensable injury by medical evidence, supported by objective findings as defined in §11-9-102(16). That a compensable injury be established by medical evidence supported by objective findings applies only to the existence and extent of the injury. Stephens Truck Lines v. Millican, 58 Ark. App. 275, 950 S.W.2d 472 (1997). "Objective findings" are those that cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16). Moreover, objective medical evidence, while necessary to establish the existence and extent of an injury, is not necessary 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). The onset of pain does not satisfy our statutory criteria for benefits. Test results that are based upon the patient's description of the sensations produced by various stimuli are clearly under the voluntary control of the patient and therefore, by statutory

definition, do not constitute objective findings. Duke v. Regis Hair Stylists, 55 Ark. 327, 935 S.W.2d 600 (1996). Finally, medial opinions addressing compensability and permanent impairment must be stated within a reasonable degree of medical certainty. Ark. Code Ann. §11-9-102(16) (i) (B); Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000).

There is no presumption that a claim is indeed compensable. O.K. Processing, Inc., et al v. Servold, 265 Ark. 352, 578 S.W.2d 224 (1979). Crouch Funeral Home, et al v. Crouch, 262 Ark. 417, 557 S.W.2d 392 (1977). The injured party bears the burden of proof in establishing entitlement to benefits under the Workers' Compensation Act, and must sustain that burden by a preponderance of the evidence. See Ark. Code Ann. § 11-9-102(4) (E) (i) (Repl. 2002); Clardy v. Medi-Homes LTC Serv. LLC, 75 Ark. App. 156, 55 S.W.3d 791 (2001). In other words, in a workers' compensation case, the claimant has the burden of proving by a preponderance of the evidence that her claim is compensable, ie., that her injury was the result of an accident that arose in the course of

her employment and that it grew out of, or resulted from the employment. Carman v. Haworth, Inc., 74 Ark. App. 55, 45 S.W.3d 408 (2001); Ringier Am. v. Combs, 41 Ark. App. 47, 849 S.W.2d 1 (1993). Further, the claimant must show a causal relationship exists between her condition and her employment. Harris Cattle Co. v. Parker, 256 Ark. 166, 506 S.W.2d 118 (1974).

It is well established that the party having the burden of proof on the issue must establish it by a preponderance of the evidence. Ark. Code Ann. § 11-9-704(c) (2) (Repl. 2002). A preponderance of the credible evidence of record means "evidence of greater convincing force." Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995); See also, Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 206 S.W.2d 42 (1947). In determining whether a claimant has sustained his or her burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. § 11-9-704; Wade v. Mr. C Cavanaugh's, 298 Ark. 363,

768 S.W.2d 521 (1989); and Fowler v. McHenry, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

In our opinion, the claimant has failed to prove by a preponderance of the evidence that she sustained compensable injuries on January 18, 2006, and October 4, 2006 by objective findings. The respondents acknowledged, as do we, that the claimant was involved in work-related incidents on January 18, 2006 and October 4, 2006, and paid for medical benefits. However, there is absolutely no evidence in the record establishing an injury by objective findings. All of the claimant's diagnostic studies have yielded negative results. The only testing that showed any problems whatsoever was the whole body scan performed in March of 2006, which showed osteoarthritis in the claimant's ankles. This is clearly a finding not related to her fall in January. The MRI's, x-rays, and the examinations all yielded negative findings. In fact, Dr. Cathey saw the claimant the day after her fall in October of 2006, and he failed to note any objective findings of injury. Accordingly, we find that the claimant has failed to prove by a preponderance of the

Bowman
F600824 & F611412

-17-

evidence that she sustained compensable injuries on January 18, 2006 and October 4, 2006. Therefore, the decision of the Administrative Law Judge should is hereby reversed.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. McKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find, as did the Administrative Law Judge, that the claimant has proved by a preponderance of the evidence the compensability of her neck, shoulder, back, ribs and left lower extremity injuries, incurred during undisputed slip-and-fall accidents at work. As such, I must respectfully dissent from the

majority's reversal of the Administrative Law Judge's opinion.

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).

The workers' compensation statutes provide that "[a] compensable injury must be established by medical

evidence supported by objective findings...." Ark. Code Ann. 11-9-102(4) (D) (Supp. 2007). "Objective findings" are defined as "those findings which cannot come under the voluntary control of the patient." Ark. Code Ann. §11-9-102 (16) (A) (i) (Supp. 2007). While objective medical evidence is necessary to establish the existence and extent of an injury, it is not essential to establish the causal relationship between the injury and the work-related accident. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522, 524 (1999); Horticulture Landscape Management v. McDonald, 80 Ark. App. 45, 89 S.W.3d 375 (2002).

Here, the claimant credibly described, and the respondent has not disputed the occurrence of the January 18, 2006 slip-and-fall accident. After the accident the claimant complained of pain in the left side of her neck. The respondent sent her to Dr. Sudesh Banaji. Dr. Banaji's examination revealed restriction in the claimant's neck movement, as well as moderate tenderness in the paraspinal neck muscle area. The claimant was diagnosed with a neck sprain and treated with Naprosyn, an anti-

Bowman
F600824 & F611412

-20-

inflammatory, and Skelaxin, a muscle relaxer. On January 22, 2006, the claimant went to the Cross Ridge Community Hospital Emergency Room complaining of left shoulder pain from the January 18, 2006 work-related accident. The Emergency Room Exam revealed a tender lateral left shoulder and trapezius. The Emergency Room took X-rays, which were unremarkable, and recommended an MRI if the symptoms persisted. The claimant was treated with Vicodin.

The claimant continued to experience pain from the January 18, 2007 slip-and-fall accident. Clinic notes indicate that the claimant was assessed as having a sternoclavicular sprain, rib sprain and neck myalgia. The clinic notes also report mild tenderness in the lower paraspinal region of the neck and tenderness of a mild to moderate nature in the left lower ribs. Cervical MRIs performed on May 17, 2006 and November 9, 2006 revealed shallow disc bulge at C5-6. Based on the above evidence, I find that the claimant has proved that she sustained compensable neck, shoulder, back and rib injuries in the January 18, 2006 slip-and-fall accident at work.

Bowman
F600824 & F611412

-21-

On October 4, 2006 the claimant had another slip-and-fall accident at work. The claimant credible described and the respondent has not disputed the occurrence of the October 4, 2006 slip-and-fall accident. After the October 4, 2006 accident, the claimant reported additional neck and shoulder pain as well as pain in the left side of the chest and left knee. The respondent sent the claimant to Dr. Sudhir Kumar. On the date of injury Dr. Kumar noted "a lot of spasm felt in the left suprascapular and left intrascapular muscles." The claimant was diagnosed as having left neck sprain, left knee pain and left chest pain. The claimant was treated with Vicoprofen, Soma and physical therapy. On October 5, 2006, the claimant was seen by Dr. Steven Cathey, who opined that the claimant had sustained musculoskeletal injuries. Dr. Cathey reiterated this opinion in a report dated October 30, 2006. Based on the above evidence I find that the claimant has proved by a preponderance of the evidence that in addition to the neck, shoulder, back and rib injuries sustained in the January 18, 2006 slip-and-fall, the claimant also sustained compensable

Bowman
F600824 & F611412

-22-

neck, knee and chest injuries in the October, 4, 2006
accident.

In conclusion, I find, as did the Administrative
Law Judge, that the claimant has proven by a preponderance
of the evidence the compensability of her neck, shoulder,
back, ribs and left lower extremity injuries, incurred
during undisputed slip-and-fall accidents at work, and for
the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner