

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F800633

RICKY D. COFFMAN,
EMPLOYEE

CLAIMANT

CITY OF JONESBORO,
EMPLOYER

RESPONDENT

MUNICIPAL LEAGUE WCT,
TPA

RESPONDENT

OPINION FILED JANUARY 8, 2009

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

Claimant appears Pro Se.

Respondent represented by the HONORABLE CHRIS BRADLEY,
Attorney at Law, North Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed August 18, 2008. The administrative law judge
found that the claimant sustained an injury arising out of
and in the course of his employment. The administrative law
judge found that the claimant was entitled to temporary
total disability benefits and reasonably necessary medical
treatment. After reviewing the entire record *de novo*, the

Full Commission affirms the administrative law judge's opinion. The Full Commission finds that the claimant proved he sustained a compensable injury, and that the claimant was entitled to benefits after he gave notice on December 13, 2007.

I. HISTORY

Rick Coffman, age 45, testified that he became employed with the Jonesboro Fire Department in May 1989. Mr. Coffman testified that he was eventually promoted to Captain with the Fire Department. The parties stipulated that the employment relationship existed at all pertinent times, including December 20, 2006. The claimant testified *pro se* that he sustained an injury on or about December 20, 2006:

Q. Tell me how the injury occurred and the nature of the injury.

A. We had went to Station One to do our daily workout and, while using one of the lifting machines, I injured my neck....I felt a pop in my neck....

Q. And assuming it was December 20, 2006, what were your hours - your shift?

A. We worked from 7:30 in the morning till seven-thirty the next morning, 24-hour shifts.

Q. Okay. And so, this is during one of the 24-hour shifts that you went to Station One for the exercise program?

A. Yes.

Q. Who was with you at the time of the accident - of the incident?

A. Mr. Chuck Hartley and Mr. Jason Oleson.

Q. Okay. After the incident, what took place?

A. I quit lifting, of course. I had a little bit of pain in my shoulder on the right side. After about two or three shifts, it didn't go away. I spoke with Mr. Grogan and asked him if he had any ideas of what I might do to relieve maybe the pinched nerve, the muscle strain, whatever I might have - might have done - because the pain that I was suffering at that time, although the pop was in my neck, was mainly right here in this shoulder.

Q. Okay, when you say this shoulder, you're talking about your right shoulder?

A. Yes.

Chuck Hartley and Jason Oleson corroborated the claimant's testimony regarding the accidental injury. The claimant's testimony indicated that he reported the accident to Darrin Grogan, who the claimant described as the "go-to guy" for the respondent-employer's workout program. Mr. Grogan corroborated the claimant's testimony.

The claimant first sought medical treatment, with his family physician, at NEA Clinic on March 6, 2007, where progress notes showed "rotator cuff" and "crepitus" with anterolateral pain over the claimant's right shoulder. An

NEA Clinic note on on November 8, 2007 indicated that the claimant was diagnosed with chronic pain and paresthesias in the left arm and leg. An NCV/EMG study was done on November 20, 2007: "This is a 44-YO man who presented with numbness and tingling in the left upper and lower extremity. He also has neck and back pain. IMPRESSION: This is an abnormal EMG and unremarkable NCV of the left upper and lower extremity, which is consistent with chronic radiculopathy at around the C7 and L4-5 level on the left." Dr. Craig A. McDaniel assessed "Chronic C-7 and L4-5 radiculopathy" on November 29, 2007.

An MRI scan on December 8, 2007 included the following findings: "At C4-C5, small central disc bulge without significant canal or foraminal narrowing. At C5-C6, large central and right paracentral disc herniation causes severe canal stenosis with flattening of the cord and abnormal signal within the cord. The right neuroforamen is moderately narrowed and the left neuroforamen is mildly narrowed by facet hypertrophy and uncovertebral hypertrophy. At C6-C7, small right paracentral disc bulge with only mild right neuroforaminal narrowing....At L3-L4, mild disc bulge with mild bilateral foraminal narrowing but no canal

stenosis. At L4-L5, mild disc bulge and mild facet hypertrophy with mild bilateral foraminal narrowing. At L5-S1, small central annular tear with no focal disc protrusion. No significant canal or foraminal narrowing."

The following opinion resulted:

1. MRI cervical spine: Large disc herniation C5-C6 causing fairly severe canal stenosis as described above.
2. MRI lumbar spine: Mild degenerative change and small annular tear at L5-S1 without nerve root compression in the lumbar spine.

Dr. Robert E. Abraham examined the claimant on December 12, 2007:

Mr. Coffman is a 44-year-old white male with a history of left shoulder pain since May. The pain is actually is (sic) from the top of his head down to the toes....

He states he was lifting weights at the fire station when this first occurred. He did not have pain at that time, he felt as if he had strained a muscle. He stopped lifting in May....

Dr. Abraham reported "Muscle spasms: mild ps and traps" in the claimant's cervical spine. Examination of the lumbar spine showed "Muscle Spasms: mild ps alone (sic) entire back." Dr. Abraham reported that the cervical MRI revealed "C 5/6 HNP root and cord impingement with cord changes C 5/6 min disk bulge"; a lumbar MRI revealed "min bulge at L5/S1."

Dr. Abraham assessed "1. R Cervical Radiculopathy," and he planned "Operative therapy ACDF C 5/6."

The claimant signed a Form AR-N, Employee's Notice Of Injury, on December 13, 2007. On the Accident Information section of the Form AR-N, the claimant indicated that he had sustained an accident on December 20, 2006 and that he had injured his neck. The claimant wrote: "We were at Station 1 working out for mandatory training. While working out it felt like my neck popped but there was very little pain. I figured it would go away." The claimant wrote that Jason Oleson and Chuck Hartley were witnesses.

The claimant testified that he underwent surgery from Dr. Abraham on or about December 14, 2007. The claimant's testimony indicated that he was returned to restricted work on or about January 10, 2008.

A pre-hearing order was filed on April 15, 2008. The claimant contended, among other things, that he sustained an accident on approximately December 20, 2006. The claimant contended that he reported the accident to Darrin Grogan. The respondents contended that the claimant "did not sustain a compensable injury while providing employment services to the employer. Alternatively, if it is found that claimant

did sustain a compensable injury, then no benefits are owed until claimant's report of the injury."

An administrative law judge scheduled a hearing on the issues of compensability, temporary total disability, and medical benefits. A hearing was held on May 30, 2008. The administrative law judge found, in pertinent part:

4. On December 20, 2006, the claimant sustained an injury arising out of and in the course of his employment, which required medical treatment and rendered him temporarily totally disabled for the period commencing December 14, 2007, and continuing for six (6) weeks thereafter until the claimant returned to work.

5. The respondent shall pay all reasonable hospital and medical expenses arising out of the claimant's compensable injury of December 20, 2006.

The respondents appeal to the Full Commission.

II. ADJUDICATION

A. Compensability

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 employee's burden of proof shall be a preponderance of the evidence. Ark. Code Ann. §11-9-102(E) (i) (Repl. 2002). Preponderance of the evidence means the evidence having the greater weight or convincing force. *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

In the present matter, the Full Commission finds that the claimant proved he sustained a compensable injury on December 20, 2006. The claimant testified that he was participating in an employer-required workout on December 20, 2006. The claimant felt a pop in his neck while using a lifting machine, and the incident occurred while the claimant was on the respondents' premises during his 24-hour work shift. Two co-workers corroborated the claimant's testimony. The claimant began seeking medical treatment in March 2007. An MRI in December 2007 showed a disc herniation in the claimant's cervical spine. The MRI also

showed degenerative abnormalities in the claimant's lumbar spine, but the record does not demonstrate that these abnormalities were in any way causally connected to the pop in the claimant's neck on December 20, 2006. Nor does the record demonstrate that the claimant injured his low back or lumbar spine on December 20, 2006.

Dr. Abraham examined the claimant on December 12, 2007 and appeared to note muscle spasms in the claimant's cervical spine. Dr. Abraham planned an operation on the claimant's cervical spine at C5-6, and the claimant testified that he underwent surgery on December 14, 2007.

The Full Commission finds that the claimant proved he sustained an accidental injury causing physical harm to his neck on December 20, 2006. The claimant was performing employment services at the time of the accident, and the injury arose out of and during the course of employment. The accidental injury required medical services and resulted in disability. The injury was caused by a specific incident and was identifiable by time and place of occurrence on December 20, 2006. The claimant established a compensable injury to his neck by medical evidence supported by objective findings, including a herniation shown at C5-6 and

muscle spasm reported by Dr. Abraham. We therefore affirm the administrative law judge's finding that the claimant proved he sustained a compensable injury.

B. Notice

Ark. Code Ann. §11-9-701(Repl. 2002) provides:

(a)(1) Unless an injury either renders the employee physically or mentally unable to do so, or is made known to the employer immediately after it occurs, the employee shall report the injury to the employer on a form prescribed or approved by the Workers' Compensation Commission and to a person or at a place specified by the employer, and the employer shall not be responsible for disability, medical, or other benefits prior to receipt of the employee's report of injury.

(2) All reporting procedures specified by the employer must be reasonable and shall afford each employee reasonable notice of the reporting requirements....

(b)(1) Failure to give the notice shall not bar any claim:

(A) If the employer had knowledge of the injury or death;

(B) If the employee had no knowledge that the condition or disease arose out of and in the course of employment; or

(C) If the commission excuses the failure on the grounds that for some satisfactory reason the notice could not be given....

In their brief on appeal to the Full Commission, the respondents contend that they did not receive notice of the claim until December 13, 2007. The respondents argue that they are not liable for benefits prior to the time they received notice. The record in the present matter supports

the respondents' argument. The claimant did not complete and sign a Form AR-N, Employee's Notice Of Injury, until December 13, 2007. The evidence does not demonstrate that the claimant provided notice of the accidental injury prior to December 13, 2007. The claimant's discussions with Darrin Grogan did not constitute notice to the respondent-employer. Nor does the record demonstrate that the Battalion Chief or any representative from the respondents' human resources department had knowledge of the injury prior to December 13, 2007. The respondents are not liable for benefits prior to the claimant's submission of the Form AR-N on December 13, 2007.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved he sustained a compensable injury on December 20, 2006. The claimant provided statutory notice of the injury when he signed and submitted the Form AR-N on December 13, 2007. The claimant proved that the surgery performed by Dr. Abraham on December 14, 2007 was reasonably necessary in connection with the compensable injury. The claimant proved he was entitled to temporary total disability compensation beginning December 14, 2007 and continuing for six weeks until the claimant

returned to work. The Full Commission therefore affirms the administrative law judge's opinion with regard to compensability, reasonably necessary medical treatment, and temporary total disability.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. McKINNEY, Commissioner

PHILIP A. HOOD, Commissioner