

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F611311

JAIME JACKSON,
EMPLOYEE

CLAIMANT

EASTSIDE ELEMENTARY,
EMPLOYER

RESPONDENT NO. 1

RISK MANAGEMENT RESOURCES,
TPA

RESPONDENT NO. 1

SECOND INJURY FUND

RESPONDENT NO. 2

OPINION FILED FEBRUARY 26, 2009

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

Claimant appears Pro Se.

Respondents No. 1 represented by the HONORABLE JARROD
PARRISH, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE BRANDON CLARK,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed May 28, 2008. The administrative law judge
found that the claimant proved he sustained a compensable
injury. After reviewing the entire record *de novo*, the Full
Commission reverses the administrative law judge's opinion.

The Full Commission finds that the claimant did not prove he sustained a compensable injury.

I. HISTORY

The record indicates that the claimant was hired as a substitute custodian for Warren School District on January 15, 2006. The claimant testified *pro se* that he worked eight hours weekly. The parties stipulated that an employment relationship existed on June 14, 2006. The claimant testified, "While I was cleaning the classroom and removing the chairs from the floor, some of those chairs are heavy duty chairs. When I lifted the chair from the floor I swung it around, and I felt something shift in my hand. I thought it was a sprain. So I looked at it, and I said, well it will probably go down. So the person that worked with me, he said well, I can see the swelling. I said well, I'm going to put a ice pack on it when I get home....So I kept doing home treatment, and nothing happened. It didn't go down. It kept, had a little throbbing pain."

The claimant signed a Form AR-C, Claim For Compensation, on October 10, 2006. The claimant wrote that the date of accident was June 14, 2006 and he described the

cause of injury: "Lifting chairs from floor, injury to right hand."

Shirley Ann Childs, a secretary at Eastside Elementary, testified for the respondents:

Q. When did you first learn that Mr. Jackson was claimant that he had been injured at the school?

A. It was in October after we had started school.

Q. And the records we have show that a report was filled out at the school 10-20-06? Is that somewhere in there?

A. Yes, sir.

Q. At any point in the summer of 2006, did he ever come to you and say that he had injured his hand?

A. No, sir....

Q. Had he ever reported anything to you, any type of problems or difficulties doing his work?

A. No, sir.

The record indicates that the claimant was examined at South Arkansas Orthopaedic Center on July 18, 2007. Dr. Charles A. Clark signed a set of instructions for out-patient surgery, date of surgery August 2, 2007, "Diagnosis: mass right hand."

A pre-hearing order was filed on February 20, 2008. The claimant contended, among other things, that he

sustained "a specific injury to his right hand on June 14, 2006. He seeks payment of medical expenses, temporary total disability benefits from July 1 to August 8, 2006 and from September 15, 2006 to a date yet to be determined." The respondents contended that the claimant "was not working on June 14, 2006 and did not sustain any injury arising out of and in the course of his employment. The claimant's present condition is the result of a preexisting condition. Alternatively, in the event of an award, the respondents would not be liable for any benefits before October 20, 2006 when the claimant gave notice of his injury."

The parties agreed to litigate the following issues: "Compensability; medical expenses; and temporary total disability benefits."

A hearing was held on February 28, 2008. Marilyn Jane Johnson, Principal at Eastside Elementary, testified for the respondents:

Q. Claimant says, it said in his deposition that he informed you of an injury to his hand in June of 2006, a couple of days after he says it happened. Is that true?

A. No.

Q. Did you get, have any conversations with him about any type of injury in June of 2006?

A. No, I did not....

Q. Explain to me the first time you heard Mr. Jackson was claiming he had injured himself at work.

A. Well, actually I came upon him. I was leaving the main building going to the media center, and he was outside by the door. And I turned to him and asked him if he was working that day, and he said he could not be working because his hand was hurt. And I saw that, I believe his hand was even wrapped maybe. But he indicated his hand, and he said, I hurt it up here. And I asked when, and he indicated back in the summer.

Q. When was this conversation taking place?

A. It was taking place well after school got started. I'm not exactly sure that month, but it was well after it started....

Q. At the time that he told you this, did he give you any explanation for what he says he did to injure himself?

A. Just that he had hurt it up there. I don't recall any specifics. But just that he had hurt it, and I asked if he had reported it. And he said he had not, and then he said I'm not wanting anything from y'all. I got veteran's. They'll take care of it....

An administrative law judge filed an opinion on May 28, 2008. The administrative law judge found, among other things, that the claimant proved he sustained a compensable injury. 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).

The employee'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).

The Full Commission reviews an administrative law judge's decision *de novo*, and it is the Full Commission's duty to conduct its own factfinding independent of that done by the administrative law judge. *Crawford v. Pace Indus.*, 55 Ark. App. 60, 929 S.W.2d 727 (1996). Judgment of a claimant's credibility is a matter exclusively within the

Full Commission's province, and we do not have to believe the claimant's testimony. *Wade v. Mr. C. Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989).

In the present matter, the Full Commission finds that the claimant was not a credible witness. The claimant testified that a co-worker, John Mosely, "wasn't in the room when I picked the chair up....He was out in the hallway." John Mosely's testimony did not corroborate the claimant's testimony. Mr. Mosely testified for the claimant he was in the classroom at the time of the alleged accident: "I seen him when he grabbed the little chair. He said, I sprained my hand. I looked at it, and I saw when he first grabbed the chair I seen it, I seen the whole thing." Mr. Mosely testified that the claimant subsequently "had a big old golf ball size knot on his hand."

We find the testimony of Shirley Childs and Marilyn Johnson to be more believable than the claimant's testimony. Shirley Childs, the school secretary, credibly testified that the claimant did not report an injury to her in June 2006. Ms. Childs did not learn of an alleged accident until the claimant signed a Form AR-C in October 2006. Marilyn Johnson, the school principal, credibly testified that the

claimant did not report an accident to her in June 2006. Ms. Johnson merely testified that the claimant vaguely told her he had hurt his hand at school but that "veterans' would take care of it."

The instant claimant did not prove that he sustained an accidental injury causing internal or external physical harm to his hand. The claimant did not prove that he sustained an injury arising out of his employment requiring medical services or resulting in disability. The claimant did not prove that he sustained an injury which was caused by a specific incident or was identifiable by time and place of occurrence. The Full Commission does not find the claimant's testimony regarding an alleged chair-lifting incident to be credible or corroborated by the record. Further, the claimant did not establish a compensable injury to his hand by medical evidence supported by objective findings. The record does not show that Dr. Clark's July 18, 2007 diagnosis of "mass right hand" was causally related to or was the result of an accidental injury allegedly occurring on or about June 14, 2006.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove he

sustained a compensable injury. We therefore reverse the administrative law judge's opinion, and this claim is denied and dismissed.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. McKINNEY, Commissioner

Commissioner Hood dissents.