

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F507174 & F601092

PATRICK T. ONUIGBO,
EMPLOYEE CLAIMANT

FAMILY DOLLAR STORES, INC.,
EMPLOYER RESPONDENT

ACE AMERICAN INSURANCE COMPANY,
INSURANCE CARRIER RESPONDENT

OPINION FILED NOVEMBER 4, 2009

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

Claimant appears Pro Se.

Respondent represented by the HONORABLE MARK A. PEOPLES,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals and Respondents cross-appeal an
opinion and order of the Administrative Law Judge filed
November 7, 2008. In said order, the Administrative Law
Judge made the following findings of fact and
conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations of the parties are hereby accepted as fact.

3. The claimant has shown, by a preponderance of the credible evidence, that he sustained a compensable mental injury or illness which was directly and causally related to a July 3, 2005, incident at the workplace. Specifically, a preponderance of the credible evidence established that the claimant suffers from Post-Traumatic Stress Disorder (hereafter, "PTSD" which resulted from a work-related armed robbery and assault and battery on July 3, 2005.
4. The claimant has proven, by a preponderance of the evidence, that he is entitled to continued medical treatment for both his physical injuries, as well as his mental illness. Specifically, the claimant is entitled to reasonably necessary medicals in the form of prescription medications required to stabilize and maintain the claimant's physical condition from the February 11, 2005, injury. Respondents also remain responsible for continued medical treatment for the claimant's PTSD.
5. The claimant has failed to prove that he is entitled additional temporary total disability.
6. The claimant has failed to prove that he is entitled to additional temporary total disability for any physical injuries sustained on either February 11, 2005, or July 3, 2005.
7. Respondents have previously paid its maximum liability for disability benefits for the claimant's mental injury or illness pursuant to Ark. Code Ann. §11-9-113(b) (1).
8. The claimant's entitlement to all permanent disability benefits requires further development of the medical evidence and has been specifically reserved by the claimant.
9. Respondents have controverted all benefits beyond those previously paid.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Therefore we affirm and adopt the November 7, 2008 decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

I respectfully concur in part and dissent in part from the majority's opinion. Specifically, I concur in the majority's finding that the claimant has

failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability benefits. However, I must respectfully dissent from the majority's finding that the claimant proved by a preponderance of the evidence that he was entitled to continuing medical treatment for both his physical injuries as well as his psychological injuries. In my opinion, the claimant has failed to meet his burden of proof.

The evidence demonstrates that the claimant was involved in a robbery at the respondent employer's place of business on July 3, 2005. The claimant was also involved in an incident where he fell off a ladder on February 11, 2005. At the time of the robbery, the claimant was on light duty. The claimant has received extensive medical treatment related to his February 11, 2005 accident.

The claimant first received treatment and indicates that he had an injury to his knee only. There is no mention of a back injury. The first mention of a back or a spinal injury is not until almost two months later on April 4, 2005. In those records of that date, the reference is to back pain which was limited to muscular and showed signs of spontaneous recovery.

There is no mention of back pain or treatment in a follow-up visit a week later. Most of the physical therapy records throughout the claimant's treatment omit any reference to back pain or treatment of the back. A May 19, 2005 MRI did reveal a "small paracentral disc herniation at L4-5," but this did not cause any obvious nerve root impingement.

The claimant is presently treating with Dr. Quereshi for "neck and back pain that started in February 2005." However, nowhere throughout Dr. Quereshi's records is the cause of this alleged pain related to the claimant's February 11, 2005 work injury. It appears that his diagnosis is based solely on the claimant's subjective complaints of pain.

A medical opinion based solely upon claimant's history and own subjective belief that a medical condition is related to a compensable injury is not a substitute for credible evidence. Brewer v. Paragould Housing Authority, Full Commission Opinion January 22, 1996 (Claim No. E417617). Moreover, the Commission is not bound by a doctor's opinion which is based largely on facts related to him by the claimant where there is not sufficient independent knowledge upon which to

corroborate the claimant's claim. Roberts v. Leo Levi Hospital, 8 Ark. App. 184, 649 S.W.2d 402 (1983).

Further, in Dr. Judy White Johnson's report dated September 15, 2005, she found that the claimant engaged in "symptom magnification", "symptom distortion" and it was "excessively concerned about vague physical symptoms."

The claimant was examined by Dr. Kenneth Rosensweig on September 26, 2005. Dr. Rosensweig noted at that visit that the claimant was "resistive and is non-cooperative on examination today." Dr. Rosensweig also noted that "cervical spine mobility is markedly limited on announced observation; however, on unannounced observation, his motion is much improved. He is darting on my chance of active/passive motion of the shoulder, knee, hip, feet, ankles, knees."

The claimant underwent an FCE on January 4, 2006. The claimant's result suggested that he gave an unreliable effort. The report states that the claimant "put forth inconsistent effort and inappropriate pain behaviors throughout the evaluation process". The FCE determined that the claimant had the ability to perform work at least in the light duty physical demand classification. On October 12, 2006, the claimant

underwent a neuropsychological evaluation. The report states, "... he has a profile that indicates both motivation that is so poor that there is a strong suspicion of manipulated responding and a measure of symptom exaggeration that is so high that this patient's profile is consistent with the individual who has overtly manipulated his presentation in order to maintain his disability."

In my opinion, the evidence demonstrates that the claimant is not entitled to additional medical treatment for his physical injuries he sustained on February 11, 2005 and again on July 3, 2005. Therefore, I must respectfully dissent from the majority's award of benefits.

I also find the claimant is not entitled to additional medical treatment for his psychological injuries. In her evaluation of the claimant, Dr. Judy White Johnson opined that "extended psychological treatment is not recommended." Dr. Johnson noted that the claimant was "inconsistent" about much information and then quite vague in his response regarding his medication, doctors, etc. Dr. Johnson noted that the claimant did not seem motivated to return to employment at the present time. In my opinion, the claimant has

failed to prove by a preponderance of the evidence that he is entitled to additional treatment for his psychological injury. The respondents have paid all the benefits to which the claimant is entitled.

Therefore, for all the reasons set forth herein, I respectfully concur in part and dissent in part.

KAREN H. MCKINNEY, Commissioner