

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F501885

ANGELA OWENS,  
EMPLOYEE

CLAIMANT

ALLTEL ARK., INC.,  
EMPLOYER

RESPONDENT

LIBERTY INSURANCE CORPORATION,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED APRIL 22, 2009

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

Claimant represented by the HONORABLE SHEILA F. CAMPBELL,  
Attorney at Law, Little Rock, Arkansas.

Respondent represented by the HONORABLE GUY ALTON WADE,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed July 24, 2008. The administrative law judge found that the claimant failed to prove there was a causal connection between the compensable injury and mental illness. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. We find that the claimant proved she was entitled to benefits for a compensable mental injury. The claimant

did not prove she was entitled to temporary total disability benefits.

I. HISTORY

Angela Anita Owens testified that she became an employee at Alltel in June 1998. Ms. Owens testified that she worked in Output Processing: "I run mail machines and I insert a set of inserts selections, pull my envelopes, the bill that you get in the mail is the work we do."

The parties stipulated that an employment relationship existed on January 20, 2005, at which time the claimant "was involved in an altercation with a co-worker." The claimant testified at hearing:

Q. What occurred?

A. That morning we were having, this girl named Tyra was having a baby shower. During the time Greg Tucker was wanting to know were they going to give him a baby shower for his baby. No one said anything. And he asked me personally, and I told him I didn't have anything to do with that baby shower. And later on that day he asked me the same question again, and I told him again that I hadn't anything to do with that baby shower. And I was getting ready, after running my machine we put our materials in our locker that we work with that day, the oil, tools and put in the locker, our jacket. And I was at my locker and somebody kicked me in the butt. And I turned around, and it was Greg Tucker. And that's what happened....

Q. And this kick to your buttocks, describe to the Court what force if any you can remember about the kick.

A. It was a quick, sharp kick, just like he just rammed his foot up into my butt, my buttocks.

The parties stipulated that the claim was initially accepted as compensable and benefits were paid but that the claim was later controverted. A physician's note dated February 11, 2005 indicated that the claimant was placed on light work restrictions for 10 days. Dr. Kenneth R. Johnston saw the claimant on February 25, 2005:

Angela comes in today with c/o still having pain in her buttock from her incident on January 20, 2005. She is having pain when she goes to the bathroom and it hurts to sit for a period of time.

**Active Problems**

CONTUSION WITH INTACT SKIN SURFACE - BUTTOCKS  
BILATERAL (922.32) LUMBAR DISC DEGENERATION L4-L5  
(722.52)....

**Physical Exam**

External buttocks nml appearance, no mass or abscess palp; anus nml appearance, no external hemorrhoids, mild dermatitis present perianal.

Dr. Johnston planned "Rx for now, continue light duty. If not improving, with ref Protol. Discussed w/pt that she may have a proctitis by her description, I doubt that is related to injury sustained in workplace....Return to regular duty Mon. pt feels able to return to reg duty though she is not 100% pain free."

An MRI of the claimant's lumbar spine was taken on March 11, 2005:

39-year-old female with low back pain radiating into the left buttocks and lower extremity region. The patient reports symptomatology since January 2005. No history of trauma or surgery given....

There is a transitional lumbar vertebral body....The alignment to the lumbar spine is unremarkable. No pathologic marrow signal intensity is seen. The conus terminates at the L1-2 level.

Axial images of the L3-4 level are unremarkable. Axial images of the L4-5 level demonstrate mild diffuse annular bulge. No canal stenosis or foraminal narrowing is seen.

Axial images of the L5-S1 level demonstrate broad based bulge slightly symmetric to the left. No canal stenosis or foraminal narrowing is identified. The visualized sacroiliac joints are unremarkable.

The impression was "Diffuse annular bulges at the 4-5 and 5-S1 levels. No focal abnormality appreciated to account for the left symptomatology. Please note there is a transitional lumbar vertebral body."

The claimant testified that she was taken off work beginning March 16, 2005. Dr. Joseph F. Farmer examined the claimant on March 16, 2005:

The patient is a 39-year-old female who is an insulin-dependent diabetic. She has been having episodes of amnesia for the past 2 weeks. She said she has had a total of 3. One occurred when she was driving; she got lost and did not know where she was, but never blacked out or actually wrecked her car. She gave no history of any tremor or sweating.

She says about a week ago she awakened from sleep and was in her kitchen searching for orange juice. She said she turned several things over in the

kitchen and does not remember anything that happened.

Today, the patient checked her blood sugar after eating breakfast and it was 110. She went to the beauty shop, and the next thing she knew, she was on the side of the road in England, Arkansas. She states that she did wake up to know that she was lost and called 911. They came out and gave her some peppermint and she did feel better....

CARDIAC: She has history of hypertension....

MUSCULOSKETAL: Denies pain and stiffness to extremities or joints. Denies joint swelling, erythema or hyperthermia.

SKIN: Denies rash, lumps or easy bruising....

I have spoken with Dr. Bursey who will further evaluate.

Dr. Farmer's diagnosis was "Recurring amnesia." The claimant was admitted for inpatient hospital treatment.

Dr. Lawson E. Glover stated on March 22, 2005 that the admitting diagnosis and discharge diagnosis was "Possible seizure with episodic loss of awareness." The additional diagnosis was as follows: "1. Insulin-dependent diabetes mellitus with possible hypoglycemia. 2. Hypertension treated with Lotrel 10/20 mg. 3. Gastroesophageal reflux disease treated with Aciphex. 4. Stress with some work trauma. 5. Subarachnoid cyst in the supracerebellar space." Dr. Glover described the claimant's Hospital Course:

Ms. Owens was admitted by my associate Dr. Burse after an episode of disorientation. She had been driving home and was found in Lonoke, many miles North and East of where she had intended to go. She was seen emergency medical technician personnel and her blood sugar was not found to be low. She was brought to the hospital. By the time she arrived, she was apparently oriented. Her blood sugar in the emergency room was 258. There were no lateralizing neurologic findings.

TREATMENT RENDERED:

Her insulin doses were adjusted. She did have some hypoglycemia in the hospital and it was felt that Lantus and NovoLog insulin would provide her better control with less likely hypoglycemia. Her neurology evaluation is underway. She did complain of some tinnitus and right ear pain and was seen by Dr. Gardner. Dr. Silzer and Dr. Gardner both plan to see her for follow-up outpatient evaluation....

3. Because of her anxiety symptoms, she will be given hydroxyzine 25 mg t.i.d.p.r.n. and consultation as an outpatient will be scheduled with a psychiatrist, Dr. Gene Reid.

Dr. Richard A. Owings performed a Psychiatric

Evaluation on April 22, 2005:

Angela Owens, a 39 year-old Female reports that she declined to participate in a baby shower at work. One of the men who was helping organize this kicked her the butt as she was leaving work. This was on January 2, 2005. She states the injury was significant, in that she had bruising. She also felt humiliated and abused. She talked with her supervisors about it, and nothing was done. The perpetrator is a friend of the supervisor. She has had a dramatic emotional response to this. She states that she cries constantly and daily, and talks incessantly about the abuse. She describes typical symptoms of depression, including loss of sense of humor, anhedonia, daily

crying, loss of energy, and low self-esteem. She states that she is not suicidal. She is having panic attacks occurring two to four times per week, during which she feels palpitations, nervousness, shakiness. She had one episode of blackout March 16, 2005. She woke up by the side of her car on the side of the road, with no idea how she got there. She went to Baptist medical Center, where she was hospitalized six days for a seizure work up, that revealed nothing. She believes this came about because she was so upset about what happened to her....

She has developed hemorrhoids, which she believes are due to being kicked in the behind....

She works for Alltell (sic) and runs a mail machine has done this for seven years. She is on work disability due to her psychiatric symptoms....

Angela Owens describes an event at work that would certainly upset most people. Her reaction is extreme (sic). It raises a question of secondary gain, particularly since she has a work release based on this. I don't know whether she is going to file some sort of lawsuit regarding this. In any case she is not coping well. She is seeing Patricia Griffin, Ph.D. for psychotherapy and I very much encouraged her to continue this to allow her to ventilate and to talk about how to cope with this trauma in a more adaptive way....I did not comment on her work release. If she asks for documentation for me, I will engage our usual policy of providing work releases from appointment to appointment and insisting that she focus on this as a therapy issue - overcoming the impediments that prevent her from working.

Dr. Owings diagnosed the following: "AXIS I: Adjustment disorder with depression and anxiety. AXIS II: Deferred. AXIS III: Diabetes, hypertension, hypercholesterolemia.

AXIS IV: Victim of assault at work. AXIS V: GAF is level 50."

The claimant testified that she returned to work at Alltel on June 13, 2005.

Dr. Lawson E. Glover examined the claimant on June 17, 2005:

Ms. Owens is a 40-year-old woman from Little Rock, AR, who returns for followup of insulin-dependent diabetes mellitus. She had had episodes of confusion earlier this year without a neurologic explanation. She has subsequently been referred to Dr. Richard Owings.... She remains on Lantus and Novolog, 4 injections daily. She has not had significant problems with hypoglycemia recently....

Evaluation did not reveal evidence of seizure activity. She has seen Dr. Silzer and Dr. Kenneth Johnston, her primary care physician. She saw Dr. Gartner who recommended amitriptyline for her tinnitus - this has improved. She has been referred to Dr. Richard Owings for psychiatric counseling and therapy and is now on Zoloft....

She does not have edema....

I will increase her morning Novolog to 10 units. Hydrochlorothiazide will be added for her blood pressure. I will see her for follow-up in several months.

Dr. Johnston corresponded on February 7, 2007:

This letter is to serve as explanation and clarification for the patient's psychiatric and psychological referrals after an incident at work in which the patient was assaulted by a coworker. The patient was assaulted by a coworker on January 20, 2005, and sought medical care here on February 11, 2005, and on numerous occasions

thereafter. The patient had extensive medical work-up and fortunately I do not believe any permanent damage occurred from the assault. However, from this incident the patient developed posttraumatic stress disorder and was treated by Dr. Patricia Griffin, who is a clinical psychologist, as well as Dr. Richard Owings, who is a psychiatrist. These treatments were directly related to the patient's injuries sustained at work and therefore I consider these to be appropriately covered under Workman's Compensation.

Patricia L. Griffen, a Clinical Psychologist,  
corresponded on February 16, 2007:

This letter is written on behalf of Mrs. Angela Owens, a patient referred by her primary physician, Dr. Kenneth Johnston whom I have been treating since April 1, 2005. Mrs. Owens was referred for treatment due to trauma she was suffering from an assault that occurred on her job, January 2005. While putting on her coat at her locker, a co-worker reportedly kicked her in the buttocks. Mrs. Owens suffered both physical injury and psychological trauma. When initially seen on April 1, 2005, she was diagnosed with Post Traumatic Stress Disorder. Physically she reported having been diagnosed with bruises, inflamed muscles, and had developed a ringing in her ear possibly causing nerve damage. Her diabetes was also unstable at that time. Psychologically, Mrs. Owens was experiencing intense anxiety, depression, a disassociative reaction in which she lost awareness of location and identity causing alarm to her family when she could not be located. She was driving at the time ended up in one location while trying to get to another place. In addition to the intense anxiety, Mrs. Owens had recurring thoughts about the incident, intense psychological distress, was unable to work, had difficulty sleeping and concentrating. She was hypervigilant (sic) and was constantly on edge.

She has required treatment from several medical specialists to include a diabetic specialist, neurologist and otolaryngologist. I referred her to a psychiatrist for medication to be used in conjunction with the psychotherapy.

Mrs. Owens was initially seen on a regular weekly basis to stabilize her moods and reduce the distress to enable her to return to work. She eventually was able to return to work June 2005.

Mrs. Owens has continued to experience emotional fluctuations since returning to work, however more recently has been able to maintain.

She continues to need psychotherapy for maintenance purposes due to mild anxiety and distress. She has not returned to a 100% functional level. While it is difficult to assign a quantitative (sic) value to her level of functioning, it is estimated that she is at a 60-70% level of capacity as compared to her premorbid functioning. She continues to be easily upset, unable to cope with stressful situations both on her job and away from the work setting with occasional problems sleeping. Mrs. Owens continues to need follow up for psychiatric medication management and psychotherapy. She continues to be treated with psychotropic medications by the psychiatrist....

A pre-hearing order was filed on April 17, 2008. The claimant contended that she was entitled to treatment for a mental illness pursuant to Ark. Code Ann. §11-9-113. The claimant contended that she was entitled to temporary total disability benefits from January 20, 2005 to June 15, 2005. The respondents contended that the assault was not work-related in origin and that the claim was not compensable. The parties agreed to litigate the issues of compensability,

medical expenses, temporary total disability benefits, and attorney's fees.

An administrative law judge found that the claimant sustained a compensable injury, a bruise to the buttocks, after an assault by a co-worker. The respondents do not appeal that finding. The administrative law judge found that the claimant "failed to prove by a preponderance of the credible evidence of record a causal connection between the compensable injury and mental illness." The administrative law judge denied and dismissed the claim; claimant appeals to the Full Commission.

## II. ADJUDICATION

### A. Mental injury or illness

Ark. Code Ann. §11-9-113 (Repl. 2002) provides:

(a) (1) A mental injury or illness is not a compensable injury unless it is caused by physical injury to the employee's body, and shall not be considered an injury arising out of and in the course of employment or compensable unless it is demonstrated by a preponderance of the evidence; provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence.

(2) No mental injury or illness under this section shall be compensable unless it is also diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders.

In the present matter, the Full Commission finds that the claimant proved she sustained a compensable mental injury. The claimant testified that she was violently kicked in the buttocks by a co-worker while on the respondent-employer's premises on January 20, 2005. The respondents do not contend on appeal that the claimant did not sustain a compensable injury pursuant to the relevant statutory provisions of Act 796 of 1993. Nor do the respondents appeal the administrative law judge's finding that the claimant proved she sustained a compensable injury in the form of a bruise to the buttocks after an assault by a co-worker. The Commission is charged with adjudicating the claim pursuant to the law and in accordance with the evidence presented to us. See Ark. Code Ann. §11-9-704(c) (Repl. 2002). The Commission may not arbitrarily disregard the testimony of any witness and we may not arbitrarily disregard other evidence submitted in support of a claim. *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001).

The evidence in the present matter demonstrates that Dr. Owings performed a Psychiatric Evaluation of the claimant on April 22, 2005. Dr. Owings noted that the claimant was suffering from symptoms of depression,

including crying, loss of energy, and low self-esteem. Dr. Owings diagnosed Adjustment disorder with depression and anxiety. Dr. Owings also noted and diagnosed that the claimant had been a victim of an assault at work. Dr. Owings noted that a clinical psychologist, Dr. Griffen, was also treating the claimant.

Dr. Johnston reiterated on February 7, 2007 that the claimant had been the victim of a workplace assault. Dr. Johnston reported that the claimant had developed post-traumatic stress disorder and stated, "These treatments were directly related to the patient's injuries sustained at work and therefore I consider these to be appropriately covered under Workman's Compensation." Dr. Griffen, a Clinical Psychologist, confirmed on February 16, 2007 that the claimant had been diagnosed with post-traumatic stress disorder. Dr. Griffen's correspondence indicated that the claimant's symptoms were causally related to the traumatic and violent assault at work in January 2005.

The Full Commission therefore finds that the claimant sustained a compensable mental injury as the result of the compensable physical injury which occurred on January 20, 2005. The claimant's mental injury and illness was

diagnosed by a licensed psychiatrist, Dr. Owings, and a licensed psychologist, Dr. Griffen. Dr. Owings' diagnosis of depression met the criteria established in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, p. 327. Dr. Griffen's diagnosis of post-traumatic stress disorder met the criteria established in the Diagnostic and Statistical Manual of Mental Disorders, pp. 427-28. There were no medical opinions before the Commission contradicting the expert findings of Dr. Johnston, Dr. Owings, or Dr. Griffen.

B. Temporary disability

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). "Healing period" means "that period for healing of an injury resulting from an accident." Ark. Code Ann. §11-9-102(12) (Repl. 2002). The healing period ends when the employee is as far restored as the permanent character of her injury will permit, and if the underlying condition causing the disability has become stable and if nothing in the way of treatment will improve that condition, the

healing period has ended. *High Capacity Prods. v. Moore*, 61 Ark. App. 1, 962 S.W.2d 831 (1998). The determination of when the healing period has ended is a question of fact for the Commission. *K II Constr. Co. v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002).

The claimant in the instant matter contends that she is entitled to temporary total disability benefits from March 16, 2005 until June 13, 2005. The Full Commission finds that the claimant did not prove she was entitled to temporary total disability benefits. The claimant was hospitalized on March 16, 2005 after a report of amnesia. The claimant was discharged from the hospital on March 22, 2005 with a diagnosis of "Possible seizure with episodic loss of awareness." The evidence does not demonstrate that the claimant's amnesia or possible seizure was causally related to the January 20, 2005 compensable injury. Nor does the record show that the claimant's hospitalization on March 16, 2005 was causally related to the claimant's compensable mental injury. Whether or not the claimant remained within a healing period for her physical injury or mental injury, the record does not demonstrate that the claimant was totally incapacitated from earning wages, as a

result of her physical or mental injury, from March 16, 2005 through June 13, 2005.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved she sustained a compensable mental injury pursuant to Ark. Code Ann. §11-9-113(Repl. 2002). The claimant proved that treatment and referrals provided by Dr. Johnston, Dr. Owings, and Dr. Griffen were reasonably necessary in connection with the claimant's compensable mental injury. We reverse the administrative law judge's finding that the claimant did not prove a causal connection between the compensable injury and mental illness. The Full Commission finds that the claimant did not prove she was entitled to temporary total disability benefits. For prevailing in part on appeal to the Full Commission, the claimant's attorney is entitled to the sum of five hundred dollars (\$500), in accordance with Ark. Code Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

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A. WATSON BELL, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood concurs, in part, and dissents, in part.

**CONCURRING AND DISSENTING OPINION**

I must respectfully concur, in part, and dissent, in part, from the majority opinion. I agree that the claimant has proved a compensable mental injury pursuant to Ark. Code Ann. §11-9-113. However, after a de novo review of the record, as I find that she is entitled to temporary total disability benefits for her compensable injury, I must respectfully dissent from the majority on this issue.

Temporary total disability for unscheduled injuries is that period within the healing period in which claimant suffers a total incapacity to earn wages. Ark. State Highway & Transportation Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982). Here, both Dr. Kenneth Johnston and Patricia Griffen, PhD, the claimant's therapist, had the claimant in an off-work status, related to her compensable injury, until she returned to work in June 2005. While the Commission has the authority to resolve conflicting evidence, including medical testimony, Foxx v. American Transp., 54 Ark. App. 115, 924 S.W.2d 814 (1996),

the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. Coleman v. Pro-transportation, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.2d \_\_\_, (2007). The majority's conclusion that the evidence of record does not support an award of temporary total disability benefits for the claimant's compensable mental injury fails to consider the work status recommendations of both of these treating doctors. As the evidence of record contains no medical opinions to the contrary, I must find that the claimant has proved her entitlement to temporary total disability benefits.

For the aforementioned reasons I must respectfully dissent.

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PHILIP A. HOOD, Commissioner