

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F412170

SHIRLEY D. PYNE, EMPLOYEE

CLAIMANT

SALINE MEMORIAL HOSPITAL,  
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED NOVEMBER 16, 2009

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

Claimant represented by HONORABLE TERENCE JENSEN, Attorney at Law, Benton, Arkansas.

Respondent No. 1 represented by HONORABLE GUY ALTON WADE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed March 19, 2009.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. There was an October 14, 2004, compensable knee injury.
2. The temporary total disability rate is \$190 per week.
3. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable back injury arising out of and in the course of her employment with respondent on October 14, 2004. The claim for benefits related to the back is denied and dismissed.

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.

Thus, we affirm and adopt the 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.

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A. WATSON BELL, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

**DISSENTING OPINION**

After my de novo review of the entire record, I must respectfully dissent from the majority opinion. I would award medical and indemnity benefits for the claimant's compensable back injury of October 14, 2004.

For the claimant to establish a compensable injury as a result of a specific incident, 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 claimant's testimony and the medical records support a finding that the claimant sustained a fall on October 14, 2004, which arose out of and in the course of her employment. The question at the hearing was whether the fall caused a new injury or exacerbation of a pre-existing condition to her back. The claimant's testimony, while sometimes confused, was emphatic that she experienced new and severe back pain after her compensable fall. She explained that her pre-existing back problems were manageable and that she was able to work despite them. The claimant's immediate concern on the date of her fall was her knee. She testified that her back pain increased over time, to the point that she was unable to work, either at her employment or at home and requiring medical treatment within one month's time. Likewise, Dr. Burton, her primary care physician, testified at deposition that when he saw her for her back pain approximately one month after the fall, he referred her to Dr. Covey for pain management because her symptoms had increased significantly.

The claimant suffered pre-existing degenerative problems in her back, which required treatment for intermittent pain. "Intermittent" is the term Dr. Burton

used to describe the claimant's back problems prior to her fall. In September 2004, Dr. Burton apparently ordered an MRI of her spine due to recent back pain. The MRI, performed on October 4, 2004, showed mild degenerative changes at several levels:

In the upper to mid lumbar region there is some mild osteophyte formation present both anteriorly and posteriorly with some mild broad based bulging of disc material particularly at the L3-4 level. This does not appear to cause significant compromise of the thecal sac or the neural exit foramina.

At L4-5 there is some discogenic vertebral body end plate fatty infiltration, particularly along the right aspect of the end plates. There is loss of water signal within the disc with general preservation of interspace height. In association with mild osteophyte formation, there is mild broad based bulging of disc material which extends in the neural exit foramina bilaterally without causing gross stenosis.

At L5-S1 there is loss of water signal within the disc with preservation of interspace height. There may be some minimal discogenic fatty vertebral body end plate infiltration particularly along the left L5 inferior end plate. There is some mild osteophyte formation with mild broad based bulging of disc material which does not appear to cause significant compromise of the thecal sac or the neural exit foramina.

Impression: Relatively mild multi-level and multi-factorial degenerative change throughout the lower thoracic and entire lumbar spine, as discussed above. No areas of compromise of the thecal sac or neural exit foramina are appreciated.

On October 14, 2004, the claimant fell to the floor when the chair upon which she was attempting sit rolled causing her to drop to the floor. Her immediate concern was for her knee which was twisted. She credibly testified that her back pain increased over time. She was seen by Dr. Burton, on November 13, 2004, who testified that she had experienced a significant increase in her symptoms, such that he referred her to a pain management specialist. He diagnosed musculoskeletal back strain with underlying degenerative arthritis and mild degenerative disc disease as noted on the MRI scan, exacerbated by the recent fall.

On October 20, 2005, Dr. Covey performed a provocative discography and CT scan. The discography showed significant pain at L5-S1 and L4-5 and some pain at L3-4. More importantly, the scan showed that L5-S1 and L4-5 were "grossly disrupted" and that L3-4 and L2-3 had endplate leaks:

Normal lordotic curvature of the lumbar spine with accentuated lumbosacral angle with manifestations of increased vertical load stress on the lumbosacral junction.

L2-3: ... Normal morphologic features of the disc with small endplate leak along the superior posterior aspect of the disc space at region of Schmorl node invagination in the inferior vertebral endplate of L2...

L3-4: ... with normal appearance of the intradiscal anatomy in the right lower extremity with again a filling of a small defect in the posterosuperior endplate of L2 consistent with a Schmorl node development at the level. No extravasation into the central or lateral canals or evidence of annulus disruption. Close approximation of the spinous process is noted but without evidence of marked Baastrup phenomenon at this juncture.

L4-5 : ... Disruption of the annulus noted primarily in the right anterolateral aspect but along the posterior margin is accompanied by concentric disc displacement and symmetric moderate hypertrophy of the facets and ligamenta flava. No extravasation in the central canal. Moderate central canal narrowing is accompanied by moderate biforaminal narrowing.

L5-S1: ... with again marked degeneration of the disc identified. Small extravasation of contrast material beneath the central subligamentous disc protrusion consistent with a midline rent in the annulus fibrosis with disarray of the annular fibers. Loss of posterior disc space height and concomitant rostral caudal sublaxation and hypertrophy of the facets results in moderate biforaminal encroachment as well.

SI Joints: Osteoarthropathy of the SI joints bilaterally as well as osteoarthropathy of the hip joints bilaterally and symmetrically.

The post-discography CT scan showed that the claimant had significant disruption of the discs at L5-S1 and L4-5, where prior to her injury, she had degenerative changes and mild bulging. I recognize that a year had passed between her fall and the post-discography CT scan,

but this was at least partially a result of the controversion of the claimant's claim for a compensable back injury, as well as the conservative nature of the medical treatment. Taken with the claimant's consistent complaints of back pain, significantly more severe than before her fall, from her November 2004 visit with Dr. Burton to the date of the hearing, the objective findings in October 2005 are clearly causally related to the compensable fall.

I find that the claimant has demonstrated that she suffered a compensable injury when she fell on October 14, 2004, which is evidenced by the significant disruption in her spine at L4-5 and L5-S1.

The claimant suffered a compensable injury, has not apparently reached maximum medical improvement and remains unable to work due to her back pain. She credibly testified that she reported to her supervisor that she fell and hurt her knee and her back on the date of injury. She worked until the day before she saw Dr. Burton for back pain on November 13, 2004. I find that the claimant is entitled to temporary total disability benefits from November 13, 2004 to a date yet to be determined.

For the foregoing reasons, I respectfully dissent.

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PHILIP A. HOOD, Commissioner