

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F706695

RAMON SMITH,
EMPLOYEE

CLAIMANT

SOUTHWEST ARKANSAS COUNSELING &
MENTAL HEALTH CENTER, INC.,
EMPLOYER

RESPONDENT

ACE PROPERTY & CASUALTY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED DECEMBER 4, 2009

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

Claimant appears Pro Se.

Respondents represented by the HONORABLE ERIC NEWKIRK,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed July 21, 2009. In said
order, the Administrative Law Judge made the following
findings of fact and conclusions of law:

1. The employer/employee relationship
existed on or about June 18, 2007, the
date of the claimant's purported injury.
2. At that time, the claimant's average
weekly wage was \$547.36 per week,
entitling him to a temporary total
disability compensation rate of \$365 per

week and a permanent partial disability rate of \$274 per week if this claim is found compensable.

3. Although the respondents are now controverting this claim in its entirety, the claimant received medical treatment from June 18, 2007, until August 16, 2007, when he was released by Dr. Rutherford with no impairment rating.

4. The claimant was paid temporary total disability benefits from June 25, 2007, to August 19, 2007.

5. Since June 18, 2007, the claimant's salary has decreased \$3,000 per year for purposes of calculating temporary partial disability at issue in this claim.

6. The claimant has failed to establish by a preponderance of the evidence that he sustained a new injury to his back as he contends on June 18, 2007.

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.

The claimant alleges that he sustained compensable injuries that are governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injuries are, indeed, injuries that are covered by the Act; however, the claimant has failed to establish the elements necessary to prove these compensable injuries by a preponderance of the evidence.

Therefore we affirm and adopt the July 21, 2009 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

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the claimant sustained a compensable aggravation injury on June 18, 2007 while lifting a gate at the respondent's facility. The claimant has credibly

testified as to the occurrence of the specific incident on June 18, 2007. The claimant testified:

Well, I am pushing and pulling and lifting on a broken security gate, I was trying to let an employee in without opening the gate, and I injured my back, broke my back, however you want to say it.

The claimant immediately reported the incident and the injury to both of his supervisors and was taken to the Emergency Room by his wife. The claimant notified his family physician, Dr. Ronald Rush, on June 19, 2007. Dr. Rush stated:

This patient comes in today with a complaint of back pain in mid and low back. He had a pain reported at his last visit approximately 6 to 8 weeks ago with a complaint of pain in his legs. This appeared to be a compression syndrome and he was treated with anti-inflammation drugs. He reports now that he was pulling and pushing on a security fence a few days ago and he felt a pain in the mid to low back. He reports that he sat down after he felt his pain and when it did not go away he went to the emergency room at Christus Saint Michael.

The majority, by affirming and adopting the opinion of the Administrative Law Judge, apparently placed great importance on the fact that at the claimant's deposition and at the hearing the claimant

testified that he had not had any problems with his back before June 18, 2007. This testimony is obviously contradicted by medical reports placed into evidence by the claimant. As the claimant placed these medical reports into evidence, I cannot find that the claimant had any intent to hide the fact that he had previously sought treatment for back pain. Furthermore, the fact that the claimant previously had back pain does not disqualify him from receiving workers' compensation benefits for the specific incident injury that occurred on June 18, 2007. In workers' compensation law, an employer takes the employee as he finds him, and employment circumstances that aggravate pre-existing conditions are compensable. Heritage Baptist Temple v. Robison, 82 Ark. App. 460, 120 S.W. 3d 150 (2003). An aggravation of a pre-existing non-compensable condition by a compensable injury is itself compensable. Oliver v. Guardsmark, 68 Ark. App. 24, 3 S.W.3d 336 (1999). An aggravation is a new injury resulting from an independent incident. Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W. 3d 900 (2000). An aggravation, being a new injury with an independent cause, must meet the definition of a compensable injury in order to establish

compensability for the aggravation. Farmland Ins. Co. v. Dubois, 54 Ark. App. 141, 923 S.W. 2d 883 (1996).

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). Here, Dr. Rush noted that the claimant had muscle spasms, which satisfies the objective findings requirement. The claimant's credible testimony regarding the specific incident, undisputed by the respondent, and corroborated by the medical record proves a causal connection between the incident and the injury. The fact that the claimant previously had back

pain does not negate the occurrence of the specific incident at work on June 18, 2007.

In conclusion, I find the claimant to be a credible witness. I believe his testimony is corroborated by the medical record. I do not believe the claimant intended to deceive the respondent or the Administrative Law Judge with his testimony that he had not had back pain prior to June 18, 2007. I find that the claimant sustained a compensable aggravation injury on June 18, 2007 while lifting a gate at work. I disagree with the majority's determination that the claimant failed to establish by a preponderance of the evidence that he sustained a new injury to his back on June 18, 2007.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner