

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F902736

GARY CREWS, EMPLOYEE	CLAIMANT
CITY OF FAYETTEVILLE, EMPLOYER	RESPONDENT
MUNICIPAL LEAGUE WC TRUST, CARRIER/TPA	RESPONDENT

OPINION FILED NOVEMBER 3, 2010

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

Claimant represented by the HONORABLE EVELYN BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE J. CHRIS BRADLEY, Attorney at Law, North 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 May 21, 2010.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On January 15, 2007, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On January 15, 2007, the claimant earned wages

sufficient to entitle him to weekly compensation benefits of \$504.00 for total disability and \$378.00 for permanent partial disability.

4. On January 15, 2007, the claimant sustained compensable injuries to his neck, back, and left wrist.
5. There is no dispute, at this time, over the claimant's entitlement to workers' compensation benefits for the compensable injuries to his neck, back, and left wrist.
6. The claimant has failed to prove by the greater weight of the credible evidence that he also sustained a compensable injury to his left elbow in the employment-related incident or accident on January 15, 2007. Specifically, he has failed to prove that this employment-related incident was the likely or probable cause of any physical injury to his left elbow, particularly one in the form of left epicondylitis.
7. The claimant would not be entitled to any benefits, under the Arkansas Workers' Compensation Act, for his left elbow difficulties, in the form of left epicondylitis.
8. The respondents have denied that the claimant sustained a compensable injury to his left elbow, on January 15, 2007, and have controverted his entitlement to any benefits for such an injury.

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.

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 is entitled to benefits related to a left elbow injury sustained during a January 15, 2007 fall at work.

The claimant is a 46-year-old man who sustained admittedly compensable injuries to his neck, back, and left wrist. The claimant had worked as a police officer for the Fayetteville Police Department for 24 years. On January 15, 2007, he was serving a warrant when he slipped on a sheet of ice. When he slipped, his feet went in the air, and he tried to catch

himself by putting his left arm out. He landed on his left side, not only injuring his neck, back, and left wrist, but also his left elbow.

On December 13, 2007, the claimant's treating physician, Dr. R. Bryan Benafield, Jr., diagnosed the claimant with lateral epicondylitis. After conservative treatment failed, Dr. Benafield performed left lateral epicondylitis surgery on December 29, 2008. The surgery provided immediate relief. The claimant had never had problems with his elbow prior to the injury, and the surgery relieved those problems.

I find a causal connection between the December 13, 2007 diagnosis of lateral epicondylitis and the January 15, 2007 fall at work. The phrase "arising out of the employment" refers to the origin or cause of the accident, so the employee is required to show that a causal connection exists between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). Arkansas Courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. Hall v. Pittman Construction Co., 234 Ark. 104, 357 S.W.2d 263 (1962). The Court

has stated that if "months" have passed between an accident and the manifestation of an injury, reasonable men might disagree about the existence of a causal connection, See Kivett v. Redmond Co., 234 Ark. 855, 355 S.W. 2d 172 (1962); Wentz v. Servicemaster, 75 Ark. App. 296, 57 S.W. 3d 753 (2001).

Here, the causal connection is established by the claimant's treating physician, Dr. Benafield. In his March 5, 2009 letter, he clears up any misunderstanding as to whether he related the claimant's elbow problems to his work-related fall in 2007:

With regard to Gary Crews' elbow, I came to the conclusion that his elbow injury was related to his shoulder injury because he told me that it never hurt prior to this injury where he fell on his arm.

I am worried about the mix up with the medical records, that was a mistake on my part where both the original clinic note and the addendum were me saying the wrong words. That is why I added the other addendum. That is purely an honest mistake on my part. I believe that this mechanism of injury of his fall could definitely prompt his lateral epicondylitis and if he didn't have symptoms prior to the fall and they started after the fall, then I would draw the conclusion that it was related to the fall that he had. Whether his previous injections were billed to his insurance or worker's comp, was not known to me at that time, nor would it affect how I felt

about the nature of his injury and its cause.

As stated by Dr. Benafield, the claimant had not had problems before the work-related fall, but pain developed after the fall. At the hearing, the claimant repeatedly stated that he had experienced pain from his shoulder all the way down to his hand. This type of pain would be consistent with epicondylitis. The claimant was having severe pain in his neck and shoulder and wrist, and may not have related the pain to the elbow specifically, but, as it became progressively worse, he did.

The record contains no evidence of any prior elbow injury. The only logical explanation for the injury is the fall. This conclusion is supported by the statements of the claimant's treating physician. The majority, by affirming and adopting the opinion of the Administrative Law Judge, has erred by placing more weight on an opinion from a non-treating physician. Greater weight should be given to the claimant's treating physician. Dr. Peter Weingarten did not treat the claimant, did not perform the surgery on the elbow, and did not participate in the claimant's long-term treatment. As Dr. Benafield is the treating physician, I find that his opinion should be given greater weight than Dr. Weingarten's.

In conclusion, based on Dr. Benafield's opinion and the claimant's testimony, I find a causal connection between the

December 13, 2007 diagnosis of lateral epicondylitis and the January 15, 2007 fall at work. I find that the claimant is entitled to benefits related to a left elbow injury.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner