

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F907003

PATRICIA GIRTMON,
EMPLOYEE

CLAIMANT

VESCOM CORPORATION,
EMPLOYER

RESPONDENT

LIBERTY MUTUAL FIRE INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED NOVEMBER 5, 2010

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

Claimant represented by the HONORABLE ANDY L. CALDWELL,
Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed April 19, 2010. The administrative law judge found that the claimant proved she sustained a compensable injury. After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's finding. The claimant proved by a preponderance of the evidence that she sustained a compensable injury to her right knee, left knee, and neck.

I. HISTORY

Patricia Yvonne Girtman, age 49, testified that she worked as a security guard for the respondent-employer. The parties stipulated that an employment relationship existed on July 22, 2009. The claimant testified on direct examination:

Q. What happened on July 22, 2009?

A. We have two computers at the back gate where I work at at Georgia Pacific....I'm in a guard shack....And I got up to go to the other computer to put the chip card in the computer. And I rolled the chair up to the desk, and the leg broke, and I fell to the floor, I hit the counter with my wrist....my right wrist.

Q. Okay.

A. And I fell to the floor and I caught myself so I wouldn't fall to hit my stomach. I fell to the floor and I was on the floor, fell on my knees and I fell back and I was on the floor a good 20 minutes or so. Nobody would come back there with me. And I tried to get up but I couldn't because of my knees, I couldn't put weight on my knees and legs. And so I just stayed there. I fell back and hit my back and my neck on the arm of the chair and I tried a couple of times to get up off the floor, but I couldn't. And finally, I had to get up cause I was back there by myself and nobody was around and all....So I pulled myself up on the counter with my left arm, to pull myself off the floor....

The claimant was treated at Ashley County Medical Center on July 22, 2009. An Emergency Physician Record on

July 22, 2009 showed the following history: "sitting in a plastic chair & the plastic leg broke & threw the pt forward into a counter & on her knees." The "location of injury" was "R knee," and it was noted, "soreness in both arms & bruises @ wrists with soreness through the back of the neck where the plastic chair hit her on recoil." A diagram on the Emergency Physician Record indicated a bruise in the area of the claimant's right thigh. Inspection of the claimant's neck and back on July 22, 2009 was normal and it was noted, "some soreness lower back & some L cervical paraspinal soreness."

The Clinical Impression on July 22, 2009 was "Contusion" to the claimant's right knee with "possible Sprain," and "+ flare of arthritis." An x-ray of the claimant's right knee was done on July 22, 2009: "No acute fracture is demonstrated. The knee joint is not dislocated. Incidentally, there are osteoarthritic changes of the knee, with narrowing of the medial portion of the knee joint."

The claimant was seen at Ashley County Medical Center on July 24, 2009, at which time she was diagnosed with "neck pain and lower back pain." X-rays were performed on July 24, 2009:

CERVICAL SPINE

Five views of the cervical spine show good alignment of the cervical vertebral bodies. There is no evidence of bony destructive process or malalignment. The disc spaces are maintained. The neural foraminae are patent. The odontoid process appears intact. Small anterior osteophyte formation is noted at C5-C6.

IMPRESSION:

1. No acute radiograph abnormality.
2. Small degenerative osteophyte at C5-C6.

LUMBAR SPINE

Five views of the lumbar spine show good alignment of the lumbar vertebral bodies. There is no evidence of fracture or bony destructive process. The disc spaces are maintained. There is no spondylolysis. Small anterior osteophytes are noted at L2 and L3. Sacroiliac joints are unremarkable.

IMPRESSION:

1. No acute radiograph finding seen in the lumbar spine.
2. Small anterior osteophytes.

The claimant's exhibits indicate that Dr. Phillip Rindt began treating her on July 24, 2009. It was noted on July 24, 2009, "Pt c/o bilat leg pain, neck & back pain. She fell @ work on 7-22-09. She states the leg on the chair broke." Dr. Rindt's handwritten diagnosis appeared to be "Neck, low back pain, contusion L lower leg." Dr. Rindt noted on July 27, 2009 that the claimant complained of both knees hurting, and that the claimant complained of "swelling into lower legs. Low back pain still bothering her." The

claimant reported that her neck hurt with certain movements. The diagnosis on July 27, 2009 was "knee pain."

The claimant followed up with Dr. Rindt on August 10, 2009: "Pt c/o low back pain & mid neck pain. She's had pain since her accident on 7-22-09. Pain became worse over this past weekend." Dr. Rindt diagnosed back pain, bilateral knee pain, and "neck spasm." Dr. Rindt's treatment plan included, "1. Referral sent to Daniels/Gati," and "2. Flexeril 10mg T/D prn muscles #30 NR Rx." The claimant testified that Dr. Rindt intended to refer her to an orthopedic physician, but that the respondents would not approve the referral

A pre-hearing order was filed on December 2, 2009. The claimant contended that she "fell at work on July 22, 2009, injuring her knee, back and aggravating a pre-existing neck condition. She seeks payment of medical expenses, temporary total disability benefits from July 22, 2009, to a date yet to be determined, and attorney's fees." The respondents contended that there was "no objective medical evidence to substantiate an injury. Alternatively, in the event of an award, the respondents seek an offset against benefits paid by third parties." The parties agreed to litigate the

following issues: "compensability, medical expenses, temporary total disability benefits, and attorney's fees."

A hearing was held on February 24, 2010. At that time, the claimant withdrew her contention that she was entitled to temporary total disability benefits. The claimant testified that she was still having complaints and problems with her knees, back, and neck. The claimant testified that she wanted additional medical treatment for her injuries.

An administrative law judge filed an opinion on April 19, 2010. The administrative law judge found that the claimant proved she sustained a compensable injury. The administrative law judge directed the respondents to "pay all medical expenses within 30 days of receipt pursuant to Rule 30." The respondents appeal to the Full Commission.

II. ADJUDICATION

A. Compensability

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4) (Repl. 2002), provides:

(A) "Compensable injury" means:

(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) (Repl. 2002). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16) (A) (i) (Repl. 2002). Objective medical evidence is necessary to establish the existence and extent of an injury but not essential to establish the causal relationship between the injury and a work-related accident. *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999), citing *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997).

The burden of proof of a compensable injury shall be on the employee, and the burden of proof shall be a preponderance of the evidence. §11-9-102(4) (E) (i) (Repl. 2002). Preponderance of the evidence means the evidence having greater weight or convincing force. *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

An administrative law judge found in the present matter, "2. The claimant has proven by a preponderance of the credible evidence that she sustained a compensable injury, caused by a specific incident, arising out of and in the course of her employment which produced physical bodily

harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102."

The Full Commission finds that the claimant proved she sustained compensable injuries to her right and left knee, and that the claimant proved she sustained a compensable injury to her neck. The parties stipulated that the employment relationship existed on July 22, 2009. The claimant's testimony indicated that, while performing employment services, her chair broke, causing her to fall to the floor. The claimant testified that she fell on both knees. The claimant also testified, "I fell back and hit my back and my neck on the arm of the chair" An Emergency Physician Record on July 22, 2009 corroborated the claimant's testimony that she fell on her knees. The "location of injury" was specifically noted to be the claimant's "R knee." The initial medical record also showed that the claimant's neck was sore "where the plastic chair hit her on recoil." The record showed a bruise in the area of the claimant's right thigh. The respondents on appeal state that there was apparent bruising in the area of the claimant's right thigh and right knee. The Clinical

Impression on July 22, 2009 was "Contusion" to the claimant's right knee along with a possible sprain and flare-up of arthritis.

The claimant began treating with Dr. Rindt on July 24, 2009. Dr. Rindt examined the claimant and appeared to diagnose "contusion L lower leg." A diagnosis of contusion has been found to be an objective medical finding not within a patient's voluntary control. *Meister v. Safety Kleen*, 339 Ark. 91, 3 S.W.3d 320 (1999). See also *Ellis v. J.D. & Billy Hines Trucking*, CA08-688 (Ark. App. 12-10-2008), citing *Parson v. Arkansas Methodist Hospital*, CA07-1185 (Ark. App. 9-24-2008) and *Bryant v. Staffmark, Inc.*, 76 Ark. App. 64, 61 S.W.3d 856 (2001). Additionally, Dr. Rindt examined the claimant on August 10, 2009 and diagnosed "neck spasm." The record in the present matter indicates that Dr. Rindt's diagnosis of neck spasm was based on his physical observation of the claimant. It has long been held that an observation of "spasm" is an objective finding not within a patient's voluntary control. *University of Ark. Med. Sciences v. Hart*, 60 Ark. App. 13, 958 S.W.2d 546 (1997).

The instant claimant proved by a preponderance of the evidence that she sustained a compensable injury. The

claimant proved she sustained an accidental injury which caused physical harm to her right knee, left knee, and neck. The claimant proved that the injury arose out of and in the course of employment and required medical services. The injury was caused by a specific incident and was identifiable by time and place of occurrence on July 22, 2009. The claimant established a compensable injury by medical evidence supported by objective findings not within the claimant's voluntary control. These objective findings included the diagnoses of "contusion" in the claimant's lower extremities and "spasm" in the neck.

The claimant did not prove by a preponderance of the evidence that she sustained a compensable injury to her low back or lumbar spine. The soreness in the claimant's lower back noted on July 22, 2009 was not an objective medical finding. There was no medical evidence of record supported by objective findings which established a compensable injury to the claimant's low back or lumbar spine. Such findings could include reports of bruising, contusion, swelling, or spasm in the claimant's lower back or lumbar spine - the evidence before us in the present matter shows no such findings. The impression from an x-ray of the claimant's

lumbar spine on July 24, 2009 was "1. No acute radiograph finding seen in the lumbar spine. 2. Small anterior osteophytes." The July 24, 2009 x-ray was not objective medical evidence establishing a compensable injury to the claimant's low back or lumbar spine. The record in the present matter does not demonstrate that the osteophytes noted on the July 24, 2009 x-ray were causally related to the July 22, 2009 accidental injury to the claimant's right knee, left knee, and neck.

The instant claimant did not prove by a preponderance of the evidence that she sustained an accidental injury causing internal or external physical harm to her lower back or lumbar spine. The claimant did not prove that she sustained a compensable injury to her lower back or lumbar spine which arose out of and in the course of employment or required medical services. The claimant did not prove that she sustained an injury to her lower back or lumbar spine as the result of a specific incident identifiable by time and place of occurrence. The claimant did not establish a compensable injury to her lower back or lumbar spine by medical evidence supported by objective findings.

B Medical Treatment

The employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a) (Repl. 2002). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Fayetteville School Dist. v. Kunzelman*, 93 Ark. App. 160, 217 S.W.3d 149 (2005). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Hamilton v. Gregory Trucking*, 90 Ark. App. 248, 205 S.W.3d 181 (2005).

An administrative law judge found in the present matter, "3. The respondents are directed to pay all medical expenses within 30 days of receipt pursuant to Rule 30." The Full Commission finds that the treatment of record provided for the claimant's right knee, left knee, and neck was reasonably necessary in connection with her compensable injury sustained on July 22, 2009. Such reasonably necessary medical treatment includes that provided at Ashley County Medical Center and treatment provided by Dr. Rindt. On August 10, 2009, Dr. Rindt expressly recommended a

referral for the claimant to see an orthopedic specialist. The Commission has the authority to accept or reject a medical opinion and the authority to determine its probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). In the present matter, the Full Commission finds that the claimant is entitled to at least one visit with an orthopedic specialist in accordance with Dr. Rindt's referral on August 10, 2009. Such an evaluation will be for the compensable injuries to the claimant's right knee, left knee, and neck.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury to her right knee, left knee, and neck. We therefore affirm the administrative law judge's finding that the claimant proved she sustained "a compensable injury." The claimant did not prove that she sustained a compensable injury to her lower back or lumbar spine. The claimant proved that the medical treatment of record for her right knee, left knee, and neck was reasonably necessary in connection with the compensable injury. The claimant proved she was entitled to at least one visit with an orthopedic

specialist in accordance with Dr. Rindt's referral. Such an evaluation will be for the claimant's compensable injury to her right knee, left knee, and neck. For prevailing on appeal, the claimant's attorney is entitled to a fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully concur, in part, and dissent, in part, from the majority opinion. Based upon my de novo review of the entire record, without giving the benefit of the doubt to either party, I find that the claimant has failed to meet her burden of proof. The majority finds that the claimant sustained a compensable injury to both her knees and neck on July 22, 2009, when a chair she was attempting to sit in collapsed and sent her falling into a counter and onto the floor. I dissent from this finding. However, the majority finds that the claimant has failed to

prove by a preponderance of the evidence that she sustained a compensable back injury. I concur.

The Emergency Physician Record records a history of "sitting in a plastic chair + the plastic leg broke + threw the pt forward into a counter + on her knees." Claimant's pain was recorded as severe on arrival at the hospital and moderate at the time of her examination. Claimant's pain was described as being on her right knee, with bruising and soreness on her right lateral hip area. Claimant also complained of some soreness on the back of her neck "where the plastic chair hit her on recoil." Upon examination, the physician noted normal inspection of the foot, ankle, leg, knee, thigh/hip, and neck/back. No swelling was appreciated. The only objective finding at that time was of bruising on the right knee and hip with the hip bruising noted on the drawing and the knee bruising noted on the examination findings. With regard to the claimant's neck and back complaints, the emergency room physician noted lower back and cervical paraspinal soreness but no bruising, swelling or spasms were detected. X-rays taken of the claimant's right knee revealed only osteoarthritic changes in the knee without any fractures or

dislocations detected. The claimant was assessed with a contusion and possible sprain of only the right knee with a positive flare of arthritis. At no time did the claimant ever complain of any injury or direct blow to her left leg or knee when she sought treatment in the emergency room immediately after the incident.

Claimant sought follow-up treatment from Dr. Rindt with the Ashley County Medical Center on July 24th, just two days after her fall complaining of bilateral leg pain as well as, neck and low back pain. X-rays taken at that time of the claimant's cervical and lumbar spine revealed small degenerative osteophytes that pre-existed the claimant's work related fall. While the physician's notes under the Comment section were somewhat illegible, it appears that the physician recorded complaints of "neck tender [illegible] low back, no new symptoms {illegible} tenderness tissue medial [left] lower leg. Claimant was diagnosed with muscle, cervical back pain and a [illegible] of the [left] lower leg" at that time. The majority interprets this record as containing objective medical evidence of a contusion to the claimant's left lower leg. I cannot reach this same finding. Even assuming, arguendo, that the illegible report

contains a diagnosis of a "contusion" to the left lower leg, the medical report does not contain any objective medical findings to support this diagnosis. Dr. Rindt only noted a finding of tenderness or tender tissue medial left lower leg upon examination. Contrary to the emergency room findings regarding the claimant's right leg, Dr. Rindt made no finding of bruising or actual contusions to the left leg. Rather, Dr. Rindt made a diagnosis of contusions based solely upon the claimant's subjective complaints of tenderness or pain in her left leg. Moreover, this diagnosis is so vague, it is impossible to determine where the claimant's left leg injury is. At the hearing and in subsequent office visits the claimant complained of knee pain. However, during this visit which resulted in a generic finding of contusion to the left lower leg, the claimant's complaints were of bilateral leg pain. With only subjective findings upon examination of tenderness, a generic finding of contusion is simply too far removed from a finding of a left knee injury to arise to a preponderance of the evidence of an objective medical finding supporting the alleged injury. Accordingly, I am at a loss to find how the majority can reach the finding of objective medical

evidence with regard to the claimant's left knee.

Therefore, I must dissent from this finding.

On August 10, 2009, the claimant again sought follow-up treatment, this time for her back and neck pain. The claimant advised that her pain had just recently become worse over the weekend. This time the claimant was diagnosed with back pain, bilateral knee pain, and neck spasm, and was referred to an orthopedic specialist. Like the finding with regard to the claimant's left knee, there is no evidence that Dr. Rindt actually observed muscle spasms in the claimant's neck. The majority makes the bald statement that the record indicates that Dr. Rindt's diagnosis was "based on his physical observation of the claimant." I cannot reach this finding based upon Dr. Rindt's medical records. Dr. Rindt's examination only reveals a finding of tender over "L4." Even assuming, *arguendo*, that this finding was actually of tenderness over C4 rather than L4, Dr. Rindt never confirms the finding of muscle spasms. At best, Dr. Rindt detected tenderness. Moreover, Dr. Rindt circled the "Normal" as opposed to the "Abnormal" section under "Physical Exam." If, in fact, muscle spasms were detected upon physical examination, the

exam results would be far from normal. According, I cannot find that the claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her neck which is supported by objective medical findings.

Although the majority has not affirmed and adopted the decision of the Administrative Law Judge, I feel compelled to address specific findings in the Administrative Law Judge's opinion. Contrary to the statement by the Administrative Law Judge, respondents do not have an obligation to provide reasonable and necessary medical treatment "once an injury has been reported" but only for actual compensable injuries. Arkansas Code Annotated § 11-9-510 states, "The employer shall not be liable for any of the payments provided for in §§ 11-9-508 - 11-9-516 in the case of a contest of liability where the Workers' Compensation Commission shall decide that the injury does not come within the provisions of this chapter."

The Administrative Law Judge cites Tyrone Terrell v. Arkansas Trucking Services, Inc. 60 Ark. Ap. 93, 959 S.W.2d 70 (1998) and Jordan v. Tyson Foods, 51 Ark. App. 100, 911 S.W.2d 593(1995) in support of her statement that the respondents were obligated to provide reasonable and

necessary medical treatment once a claim has been reported. Jordan v. Tyson Foods is not on point. Terrell v. Arkansas Trucking Services, Inc., is distinguishable. The claimant in Terrell sustained admittedly compensable injuries to his neck, right shoulder, right leg and lower back. The claimant sought additional medical treatment in the form of a psychiatric evaluation and treatment for depression. In finding that the psychiatric evaluation was compensable, the Court of Appeals noted that the claimant had only been superficially evaluated by a psychotherapist and only briefly talked to a psychiatrist, and since A.C.A. § 11-9-113 specifically requires that a mental injury or illness be diagnosed by a licensed psychiatrist or psychologist, the claimant is entitled to a psychiatric evaluation. In distinguishing Terrell from the case presently before the Commission, I note that the claimant in Terrell had admittedly compensable injuries. The psychiatric evaluation was reasonable and necessary medical treatment in connection with these injuries to determine whether his mental condition was caused by his compensable injuries as specifically required in A.C.A. § 11-9-113. In the present claim, the issue is not whether a mental condition is

related to a compensable injury, but whether a compensable injury, in fact, occurred. Once a claim has been controverted, the respondents no longer bear any burden towards a claimant for any kind of expenses, medical or otherwise. A.C.A. § 11-9-510. The burden has always rested upon the claimant to prove the compensability of her claim, this includes establishing compensability by objective medical findings. A.C.A. § 11-9-102(4)(E)(i) and (16).

After weighing the evidence impartially, without giving the benefit of the doubt to either party, I find that the claimant has failed to prove by a preponderance of the evidence that she has sustained a compensable injury to her left leg, back or neck. The claimant complained of pain, swelling, and soreness; however, the medical records are devoid of any objective findings to the left legs, back or neck to support a compensable claim. With regard to her knees, the Emergency Room evaluation from the day of her injury noted a normal examination of the claimant's foot, ankle, leg, knee, thigh/hip, and neck/back. Bruises were noted on examination of the right knee as well as on the chart on the right lateral thigh. However, no such complaints or findings were made with regard to the

claimant's left leg. The claimant complained of swelling in her legs, but the medical records do not substantiate any objective medical findings of swelling. The Emergency Room records specifically note no swelling was detected. While the claimant complained of swelling in her knees on July 27, 2009, there is no evidence that an objective medical finding of swelling was ever detected. The claimant was diagnosed with cervical spasm on August 10, 2009, but it is not clear from the medical record if this diagnosis was made from observation of spasms or from the claimant's subjective complaints. As the claimant bears the burden of proof, I cannot find that she has established any compensable injuries to her left knee, back and neck by a preponderance of the evidence. Therefore, I concur, in part, and dissent, in part, from the majority opinion.

KAREN H. MCKINNEY, COMMISSIONER

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

CONCURRING AND DISSENTING OPINION

After my de novo review of the entire record, I must respectfully concur and dissent from the majority opinion. I agree with the majority opinion, except that I find that the claimant proved that she sustained a compensable injury to her lumbar spine. The claimant had degenerative changes in her lumbar spine, in the form of small anterior osteophytes shown by radiographic exam, which were certainly outside of her voluntary control, meeting the requirement of objective findings. Her lumbar spine, with its osteophytes, was asymptomatic prior to the work-related accident and became symptomatic immediately afterwards. The claimant complained of lumbar pain at the emergency room on the date of her injury, two days later, and again three days after that. In less than a month, her lumbar pain had worsened significantly. She has had consistent problems since that time with her lumbar spine. She testified, and the medical record supports, that she did not have back pain prior to the date of the work-related accident. There is nothing in the record to indicate any other cause for lumbar back pain to arise within forty-eight hours of her work-

related injury in which she fell to the floor "hard." The work-related accident either caused or precipitated the claimant's need for medication and treatment of her lumbar spine and its degenerative changes. See Estridge v. Waste Management, 343 Ark. 276, 33 S.W.3d 167 (2000). I would award the claimant medical benefits for her lumbar spine in addition to the benefits awarding in the majority opinion.

For the foregoing reasons, I must respectfully concur and dissent from the majority opinion.

PHILIP A. HOOD, Commissioner