

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F810191

DAVID GROTHAUS, EMPLOYEE	CLAIMANT
VISTA HEALTH LLC, EMPLOYER	RESPONDENT
BRIDGEFIELD CASUALTY, CARRIER/TPA	RESPONDENT

OPINION FILED MAY 18, 2010

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

Claimant represented by the HONORABLE CONRAD ODOM, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE JAMES A. ARNOLD, II, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed October 28, 2009.

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

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on July 15, 2009, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.
2. The claimant has failed to prove by a preponderance of the evidence that he

suffered a compensable injury to his cervical and lumbar spine on September 29, 2008.

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 sustained a compensable aggravation injury to his cervical and lumbar spine during the attack by a student, and I would award benefits accordingly.

HISTORY

The claimant is a 58-year-old teacher who graduated from college with a BA in Political Science in 1976. The claimant was unable to find a job teaching, and he went to work for a fire department as a firefighter/paramedic, and he suffered a work-related injury to his cervical lumbar spine in 1985. As a result of that injury, the claimant underwent a cervical fusion surgery in 1985, and a lumbar fusion surgery in 1989.

Because of the injury to his back, the claimant was unable to resume his duties as a firefighter, so he updated his teaching credentials and began performing volunteer work as a teacher in Illinois. In 1994-1995, the claimant moved to Fayetteville and began attending school at the University of Arkansas, where he obtained a BA in Communication Disorders and entered graduate school.

Claimant subsequently moved back to Springfield, Illinois, and took a teaching position at a school there, after which he took a teaching position in Eureka Springs, Arkansas, for two years.

The claimant again suffered injury to his back while working in Eureka Springs. In 2002, he was attacked by a student while speaking at a school and was knocked over backwards. As a result, claimant's prior fusions were broken. Claimant then underwent reconstructive surgery by Dr. Raben. This included Dr. Raben putting a plate with screws in the front of his cervical spine and rods in the claimant's lumbar spine.

In 2005, the claimant returned to work teaching in Springdale, Arkansas. Additionally, a screw in the claimant's front plate had come loose and was causing him problems by 2007. The claimant underwent surgery by Dr. Knox to take the plate out and put rods in his neck. After the surgery, he continued to receive medical care for his back and neck problems.

The claimant then began working at the respondent's psychiatric facility for emotionally disturbed teenagers, as a teacher, in August 2008. On September 29,

2008, the claimant was injured when he was attacked by a student in his classroom.

On that day, the claimant was conducting a class and things were proceeding along as usual. The student that attacked the claimant was on track to be released from the hospital, but he had just found out that his foster home was not going to take him back. As class proceeded, the student began taking the levelers off his desk. Claimant was kneeling next to the student, informing him that he could not remove the levelers, when the student threw the metal objects at the claimant's face. After this, the student began punching the claimant in the face, and attempted to attack another student. To protect the other student, the claimant tackled the student to the ground. While on the ground, the claimant was kicked in the head by the student's heel at least three times.

Additional employees arrived and restrained the student. However, the incident left the claimant physically shaken. Claimant had to take a break to compose himself and clean off blood from his face, and he sent the students to the cafeteria to take a break. After the altercation,

claimant attempted to restart the class, and continued working throughout the day.

When the claimant arrived home, he was increasingly sore in his neck and his back. When he woke up the next morning, he had a terrible headache with additional soreness in his neck and lower back. However, claimant decided to go into work that day, as he hates to miss work. As the day continued to go on, claimant began having stiffness and muscle spasms in his lower back.

The claimant reported this problem to the respondent, and he was sent for an evaluation by Dr. Vandergriff at the Arkansas Occupational Health Clinic on September 30, 2008. Dr. Vandergriff gave the claimant a full work-up, but was concerned with his neck condition, and referred him to Dr. Knox for an appointment on October 3, 2008.

When the claimant visited Dr. Knox, he was continuing to experience pain and stiffness in his neck and back, and he had numbness that radiated down his left side to his left foot. Dr. Knox ordered an MRI and took the claimant off of work. Additionally, claimant was to return to Dr. Knox's office at a later time to review the film from

his MRI. However, Dr. Knox's office subsequently lost the follow-up appointment through technical error and rescheduled a month later. Respondents' case manager scheduled claimant to subsequently visit Dr. Blankenship at an earlier date to avoid a wait.

Dr. Blankenship examined the claimant and put him on a course of steroids with aggressive physical therapy. Claimant attended physical therapy three times a week, and the primary focus was to loosen up his neck and back.

The claimant ultimately followed up with Dr. Knox. Dr. Knox suggested a continuation in claimant's physical therapy. Additionally, Dr. Blankenship requested surgery. Claimant was more comfortable with Dr. Knox, and requested that he be switched back to him. However, the surgery was not approved by the respondent.

DISCUSSION

The employer takes the employee as it 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); Pearline Williams v. L&W Janitorial, Inc. 85 Ark. App. 1, 145 S.W. 3d 383 (2004). An aggravation is a new injury with an

independent cause and, therefore, must meet the requirements for a compensable injury. Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 s.W.3d 900 (2000); Ford v. Chemipulp Process, Inc., 63 Ark. App. 260, 977 S.W.2d 5 (1998).

Arkansas Code Annotated §11-9-102(4) (A) (i) defines "compensable injury" as:

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.

The workers' compensation statutes provide that "[a] compensable injury must be established by medical evidence supported by objective findings...." Ark. Code Ann. 11-9-102(4) (D) (Supp. 2007). "Objective findings" are defined as "those findings which cannot come under the voluntary control of the patient." Ark. Code Ann. §11-9-102 (16) (A) (i) (Supp. 2007). While objective medical evidence is necessary to establish the existence and extent of an injury, it is not essential to establish the causal relationship between the injury and the work-related accident. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443,

990 S.W.2d 522, 524 (1999); Horticare Landscape Management v. McDonald, 80 Ark. App. 45, 89 S.W.3d 375 (2002).

The majority finds that the claimant did not present objective evidence of an aggravation injury. However, the test is not whether the injury caused the condition, but rather the test is whether the injury aggravates, accelerates or combines with the condition. See Nashville Livestock Commission v. Cox, 302 Ark. 69, 787 S.W.2d 664 (1990); Minor v. Poinsett Lumber & Mfg. Co., 235 Ark. 195, 357 S.W.2d 504 (1962); Conway Convalescent Center v. Murphree, 266 Ark. 985, 588 S.W.2d 462 (Ark. App. 1979); St. Vincent Medical Center v. Brown, 53 Ark. App. 30, 917 S.W.2d 550 (1996). Here, the evidence presented indicates that the claimant had pre-existing cervical and back conditions. But the evidence also shows that there was a specific incident at work on September 29, 2008 wherein the claimant was attacked by a student. The respondent has not disputed the occurrence of this incident, as the minor facial lacerations and bruises the claimant received from the attack have been accepted as compensable injuries. The claimant has consistently complained of pain in his back and neck since the incident. Based on the above evidence, I find

that the attack at work aggravated, accelerated or combined with the claimant's pre-existing condition. See Nashville Livestock Commission v. Cox, ; Minor v. Poinsett Lumber & Mfg. Co.; Conway Convalescent Center v. Murphree; St. Vincent Medical Center v. Brown, Id.

Furthermore, the following medical report from Dr. D. Luke Knox, dated December 5, 2008, supports the causal connection between the attack at work and the claimant's aggravation injury:

David Grothaus was seen in the Neurosurgery Clinic on December 5, 2008 for further evaluation of his neck and arm pain. I have had the opportunity to take care of David for quite a few years. He had undergone extensive reconstructive spine surgery and, actually, he was doing rather well until September 29 when he was accosted by one of the patients at Vista Health. His neck pain is rather significant, and he has left triceps pain over the shoulder. He was seen by my assistant. We kept him off of work....

As for objective findings, the claimant presented an MRI reports of the cervical and lumbar spine dated October 13, 2008. The cervical spine MRI report stated:

IMPRESSION: This cervical enhanced MRI demonstrates:

1. Previous fusion of the C6-7 disc space level with metallic artifact seen in the posterior elements.
2. Kyphotic defect at the superior border of C6 above the fusion. The vertebral canal was still adequate. I see no pathological signals within the spinal cord.
3. The patient does appear to have narrowing of the C5-6 neuroforamina of uncertain clinical significance. Clinical correlation is needed to see if this is explaining the patient's left arm symptoms.

The lumbar MRI stated:

IMPRESSION: This lumbosacral MRI demonstrates:

1. At the L5-S1 disc level, there was loss of disc space height. This patient has had a previous fusion with metallic artifact seen in the posterior elements and anteriorly. There was either some anterior appliance of the screws have ruptured the anterior cortex of S1.
2. There was moderate spinal stenosis at the L2-3 disc spaces level as the result of retrograde spondylolithiasis of L2 on L3. There was also a bulging disc contributing to the narrowing of the vertebral canal. There does not appear to be enough spinal stenosis to be impinging the nerve roots.
3. The post contrast enhanced sequences demonstrated no pathological enhancement of the neural elements or vertebral bodies.

Based on the above, I find that the claimant has clearly satisfied the objective finding requirement. He has proved the existence and extent of his injury. See Ark. Code

Ann. §11-9-102 (16) (A) (i); Wal-Mart Stores, Inc. v. VanWagner, Supra. The requirement that a compensable injury be established by medical evidence supported by objective findings applies only to the existence and extent of the injury. Stephens Truck Lines v. Millican, 58 Ark. App. 275, S.W. 2d (1997). The Administrative Law Judge's erroneous analysis, affirmed and adopted by the majority, confuses the "objective finding" element with the "causal connection" element. In Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999), the Arkansas Supreme Court held that objective medical evidence was not essential to establish a causal relationship between the injury and the claimant's work. The presence of a pre-existing condition does not preclude the claimant from meeting the objective medical finding requirement. The claimant's credible testimony corroborated by the medical records clearly establishes a causal connection between the at-work incident and the claimant's need for treatment. Specifically, the claimant credibly testified he had increased pain and numbness after the attack at work. The claimant was able to work before the attack. Now he is unable to work and surgery is not just a possibility, it is a strong recommendation.

In conclusion, I find that the claimant sustained compensable aggravation injuries on September 29, 2008 when he was attacked by a student. The claimant does not have to prove the causal connection element with objective findings. For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner