

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. F809231

CLORETTA HAWLEY, EMPLOYEE	CLAIMANT
FIRST SECURITY BANCORP, EMPLOYER	RESPONDENT
TRAVELERS INSURANCE COMPANY INSURANCE CARRIER	RESPONDENT

OPINION FILED OCTOBER 21, 2010

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

Claimant represented by the HONORABLE, JAMES EVANS, JR., Attorney at Law, Springdale, Arkansas.

Respondents represented by the HONORABLE PHILLIP CUFFMAN, 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, April 23, 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 September 11, 2008, the relationship of employee-employer-carrier existed between the parties.

3. On September 11, 2008, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$279.00 for total disability and \$209.00 for permanent partial disability.
4. On September 11, 2008, the claimant sustained compensable injuries to her right ~~Hawley~~-knee, in the form of a contusion and to her low back or lumbar spine, in the form of a lumbar strain. Specifically, the greater weight of the credible evidence establishes that the claimant was performing employment services, at the time of her accidental fall and resulting injuries on September 11, 2008. She has further established by medical evidence, which is supported by objective findings, the actual existence of these specific physical injuries. Finally, she has proven by the greater weight of the credible evidence that these injuries arose out of and occurred in the course of her employment, were caused by a specific incident, were identifiable by time and place of occurrence, caused internal physical harm to her body, and required medical services and resulted in temporary disability.
5. The medical services provided to the claimant for her compensable injuries by and the direction of the personnel at the Northwest Medical Center emergency room, by and at the direction of Dr. Robert Wilson, and by and at the direction of Dr. Kris Hanby represent reasonably necessary medical services, under Ark. Code Ann. §11-9-508. Pursuant to the provisions of this subsection, the respondents are liable for the expense of these services, subject to the medical fee schedule. The claimant has failed to prove that the medical services provided and recommended to her for back difficulties, on and after September 9, 2009, by and at the

direction of Dr. Cyril Raben represent reasonably necessary medical services for her compensable low back or lumbar injury. Specifically, she has failed to prove by the greater weight of the credible evidence that these medical services were necessitated by or connected with her compensable low back or lumbar injury of September 11, 2008.

6. The claimant has proven that she is entitled to temporary total disability benefits for the period of September 12, 2008 through November 5, 2008. Specifically, she has proven that during this time she continued within her healing period from the effects of one or more of her compensable injuries and had not returned to work or continued to be rendered totally disabled. The claimant has failed to prove that she is entitled to temporary total disability benefits after November 5, 2008. Specifically, she has failed to prove that she continued within her healing period from the effects of either of her compensable injuries, after that date.
7. The respondents have denied the occurrence of any compensable injuries and have controverted this claim in its entirety.
8. The appropriate fee for the claimant's attorney is the maximum statutory attorney's fee on the controverted temporary total disability benefits herein awarded.

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 treatment provided the claimant by Dr. Cyril Raben is causally connected to the September 11, 2008 incident, and is reasonably necessary medical treatment.

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 claimant's back injury manifested itself immediately after the fall at work. X-rays of her back were taken at the emergency room and she was diagnosed with an acute lumbar strain. The claimant testified that

she has been in pain from her back injury since the fall.  
On September 9, 2009, the claimant saw Dr. Cyril Raben:

This 60 yr. old female presents for low back pain. She presents with current films. She has had back pain since she fell on September 11, 2008 in an on the job injury, and she felt immediate pain in her back and knee. She was taken to the ER that day. She states she has most of her pain when she stands.

I have x-ray evaluation showing an essentially normal study of the lumbar spine. There is some osteophytosis near the middle transitional and inferior aspect anteriorly. Mcnab type traction spurs or no flexion extension laterals show any evidence of any unusual motion; however, there is close to a grade 1 spondylolisthesis of L4-5. These pictures are from a year ago.

Apparently she fell off a step at work landing on her back, her buttock and her knees. She went to the ER at Northwest where she was seen and evaluated. She was told that she had a nondisplaced fracture through her patella. She saw another physician, Dr. Hamby, who said there was no fracture through the patella. She saw another physician.

Exam today showed that she was markedly obese but had some pain with forward flexion as well as extension of her lumbar spine. She had difficulty with heel and toe walking. The muscular strengths appear to be intact and symmetrical. I think no one has checked her lumbar spine at this point. I'm concerned with internal disc derangement

with this trauma. We will see her back with us for follow up after an MRI scan.

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a) (Repl. 2002). Injured employees must prove that medical services are reasonably necessary by a preponderance of the evidence; however, those services may include that necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. Ark. Code Ann. § 11-9-705(a) (3) (Repl. 2002); Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995); See Artex Hydrophonics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

I find that the treatment provided by Dr. Raben was necessary to accurately diagnose the nature and extent of the compensable injury. On September 9, 2009, Dr. Raben reviewed the X-rays taken at the emergency room. He noted a grade 1 spondylolisthesis and stated: "I think no one has checked her lumbar spine at this point. I'm concerned with

internal disc derangement with this trauma." Dr. Raben ordered an MRI. Clearly, this is treatment necessary to accurately diagnose the nature and extent of the injury the claimant sustained in the fall on September 11, 2008.

Furthermore, there is no evidence in the record indicating that the claimant had ever suffered from this type of injury in the past. On September 17, 2009, Dr. Raben indicated that the claimant has L2-3, L3-4 and L5-S-1 disc space dessication with some areas of hypointensity in all of these spaces. He stated:

We had a frank discussion on when this could have occurred and, with what I'm seeing in the areas of hypointensity of these disc spaces, the fall that she'd taken about a year ago could have been the culprit and could have caused this desiccation that I'm seeing at the L5-S1, L2-3 and L3-4 interspaces.

Clearly, Dr. Raben is attempting to accurately diagnose the nature and extent of the claimant's injury so that he can treat her pain, which the claimant testified has persisted since the date of the accident. Dr. Raben provided the claimant with Percocet to treat her pain. Treatment of pain associated with a compensable injury is also reasonably necessary medical treatment.

In conclusion, I find that Dr. Raben's treatment for the claimant's back injury is causally related to the falling incident at work on September 11, 2008. The injury manifested itself immediately after the incident, as shown on X-rays taken at the emergency room. The claimant credibly testified that the pain from the injury did not cease, causing her to seek treatment with Dr. Raben. Dr. Raben has provided the claimant with diagnostic testing to diagnose the nature and extent of the claimant's injury, as well as pain medication. Both diagnostic testing and pain management are considered reasonably necessary medical treatment under the Arkansas Workers' Compensation Act.

For the aforementioned reasons I must respectfully dissent.

---

PHILIP A. HOOD, Commissioner