

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F803153

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| ERMA SMITH, EMPLOYEE | CLAIMANT |
| SOUTHWEST ARKANSAS FOOD BANK, EMPLOYER | RESPONDENT |
| COMMERCE & INDUSTRY INSURANCE CO., CARRIER/TPA | RESPONDENT |

OPINION FILED JUNE 3, 2010

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

Claimant represented by the HONORABLE STEVEN MCNEELY,
Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD,
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 December 29, 2009.

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

1. There was a June 16, 2007,
employer-employee relationship.
2. The compensation rates are \$504/\$378.
3. Respondents accepted the right knee as
compensable and paid all benefits, to include
a 2% permanent impairment rating.
4. The claimant has failed to prove by a
preponderance of the evidence that she

sustained a compensable back injury on June 16, 2007, while she did sustain a compensable knee 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 proved by a preponderance of the evidence that she sustained a compensable back injury on June 16, 2007 during the same lifting incident in which she sustained a compensable knee injury. I would award the claimant all benefits associated with her compensable back injury.

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. §11-9-102(4) (A) (i) (Repl. 2002), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (4) (D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v.

Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

As there is no dispute as to the occurrence of the specific incident in this claim, we are primarily faced with a medical question. Dr. Van Zandt, a neurologist, opined that the claimant did not have a back injury. Dr. Harold Chakales, an orthopedic surgeon, has opined that the claimant has a back injury. I place more weight on Dr. Chakales opinion than on that of Dr. Van Zandt. On January 7, 2009 Dr. Chakales stated:

Since my last report, Ms. Erma Smith returned to see me on January 7, 2009. She has had an MRI which was grossly abnormal and shows evidence of spinal stenosis. I have enclosed a copy of that report for your records. An electromyographic study was also done on December 18, 2008, which showed no evidence of any motor involvement.

Ms. Smith continues to complain of quite a bit of back and leg pain. Physical findings corroborate that.

I believe Ms. Smith would be a suitable candidate for a lumbar myelogram and CT scan due to the significantly abnormal findings on the MRI. I will have her return in follow up in four weeks.

The claimant continued to treat with Dr. Chakales and on July 15, 2009, Dr. Chakales stated:

Ms. Smith comes in. She recently had a lumbar myelogram and CT scan. I felt there were degenerative disc changes. She has abnormal findings at L4-5, L5-S1. There is impingement on the L5 root. At the time of her myelogram I felt she had scoliosis with bulging of the discs at L2-3 and changes in the lower lumbar area. She is to return to see me on August 17, 2009, at which time we will discuss potential surgical intervention. I will set her up for a lumbar ESI as well. We will try the epidurals and see if they help. If not, we should then consider surgical intervention.

Based on the claimant's credible testimony regarding her symptoms following the lifting incident at work, and the corroborating medical records of Dr. Chakales, I find that the claimant has proved by a preponderance of the evidence that she sustained a compensable back injury on June 16, 2007.

Furthermore, contrary to the majority, I do not find that the claimant's current need for treatment pre-existed the June 16, 2007 specific incident. Although it is true that the claimant had received extensive chiropractic

treatment before the specific incident in this claim, 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).

Before the incident, the claimant was able to work without interruption. Before the incident the only medical treatment the claimant received was minor chiropractic adjustments. After the incident, the claimant was unable to perform her job duties. After the incident, surgery is a recommendation. For the majority to conclude that the claimant's need for treatment was due to a pre-existing condition and did not stem from the lifting incident at work is simply not supported by the evidence of record.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner