

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F905412

JULIE McELROY SMITHSON, EMPLOYEE	CLAIMANT
THE SUMMIT GROUP, INC., EMPLOYER	RESPONDENT
TRAVELERS INSURANCE COMPANY, CARRIER/TPA	RESPONDENT

OPINION FILED NOVEMBER 15, 2010

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

Claimant represented by the HONORABLE J. RANDOLPH SHOCK, Attorney at Law, Fort Smith, 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 June 28, 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 November 7, 2008, the relationship of employee-employer-carrier existed between the parties.
3. On November 7, 2008, the claimant earned wages sufficient to entitle her weekly compensation

benefits of \$512.00 for total disability and \$384.00 for permanent partial disability.

4. On November 7, 2008, the claimant sustained a compensable injury to her spine.
5. The claimant has failed to prove by the greater weight of the credible evidence that she also sustained a compensable injury to her jaw on November 7, 2008. Specifically, she has failed to prove the likely or probable existence of a causal relationship between the specific employment-related incident on November 7, 2008 and any physical injury to her jaw, particularly one involving the transmandibular joints of the jaw. There is no dispute to be litigated at the present time over medical services related to the claimant's admittedly compensable back injury.
6. The claimant has failed to prove that she is entitled to any medical services, at the respondent's expense, for difficulties with her jaw or headaches. Specifically, the claimant has failed to prove that medical services for these complaints would be necessitated by or connected with a compensable injury, as required by Ark. Code Annotated §11-9-508.
7. There is no dispute over temporary disability benefits, at the present time.
8. The respondents have controverted the claimant's entitlement to any benefits for an alleged compensable injury to her jaw or any medical services for her headaches.

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 the claimant to be a credible witness. Her testimony is corroborated by her dentist. As such, I find that the claimant has met her burden of proving by a preponderance of the evidence that she sustained a compensable aggravation of her pre-existing TMJ in the low-impact car accident on November 7, 2008.

A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which

compensation is sought. See Nashville Livestock Commission v. Cox, 302 Ark. 69, 787 S.W. 2d 664 (1990). 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).

Here, the claimant testified that she suffered occasional low pain headaches and jaw problems prior to the accident, but not very often. She testified that, in junior high school, she had been given a splint for her jaw and, in early adulthood, a night guard, which she used approximately twice per year.

On November 7, 2008, the claimant was involved in a low-impact car accident when she was rear-ended during a work-related trip. The claimant testified that she sought medical treatment for spinal injuries the morning after the automobile accident. The claimant received treatment for her spinal injuries, including examination, prescription medication, physical therapy, and diagnostic testing. As for the TMJ condition, she testified that the symptoms with her jaw and headaches changed the day following the accident. She testified that she had a loud clicking in her jaw, that it would lock up while talking, and that she would have to pop it into place, causing a very sharp pain in her head. She testified that her

headaches became worse, to where it hurt to open her eyes and felt like her head would explode. She testified that she sought dental and medical treatment for the TMJ and headaches, and eventually received treatment from Dr. James Borengasser, a dentist.

Dr. Borengasser testified that the claimant had been a dental patient at his clinic since 2004. He stated that she came in about twice a year for dental examinations and other treatments as needed. He testified that, on various occasions, the notes reflected a TM examination had been recommended, but at no point in any of the pre-accident appointments did she indicate any real interest or need for the exam, nor did she have it done. He stated that, prior to the accident, his notes periodically indicated popping or soreness. He testified that, post-accident, he was noting popping and crepitus and extreme soreness, and that his language used to describe the symptoms was more severe. He noticed that the crepitation during the April 21, 2009 appointment was "audible without amplification." He stated that this indicated that there was, in fact, a difference between her earlier exams and the April 21, 2009 exam. The radiological findings following that appointment stated:

Displaced mandibular condyles consistent with dislocated temporomandibular discs. There is flattening of both right and left mandibular condyles. There is slight kyphosis in the cervical region and a nasal airway

obstruction.

Dr. Borengasser testified that TMJ aggravation can be caused by a rear-end vehicle collision, and supported his opinion with an article from the Journal of the American Dental Association, which was made an exhibit to the deposition. Based on the claimant's credible testimony, corroborated by the deposition testimony of Dr. Borengasser, I find that the claimant has proved by a preponderance of the evidence that she sustained a compensable aggravation of her TMJ condition during the low-impact car accident on November 7, 2008.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner