

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F901440

DAWN L. ASHCRAFT,
EMPLOYEE

CLAIMANT

WHITE RIVER MEDICAL CENTER,
EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,
TPA

RESPONDENT

OPINION FILED NOVEMBER 28, 2011

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

Claimant represented by the HONORABLE FREDERICK S. "RICK"
SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondent represented by the HONORABLE BILL WALMSLEY,
Attorney at Law, Batesville, Arkansas.

Decision of Administrative Law Judge: Affirmed in part,
reversed in part.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed May 20, 2011. The administrative law judge
found that the claimant proved she was entitled to
additional medical treatment for her compensable left leg
injury. The administrative law judge found that the
claimant proved she sustained a compensable injury to her
back. After reviewing the entire record *de novo*, the Full

Commission finds that the claimant proved she was entitled to additional medical treatment for her compensable left leg injury. We find that the claimant did not prove she sustained a compensable injury to her back.

I. HISTORY

Dawn Ashcraft, age 44, testified that she became employed as an Environmental Services Aide for White River Medical Center in approximately June 2006. The parties stipulated that the claimant sustained a compensable injury to her left leg on February 1, 2009. The claimant testified, "I had stepped upon a chair....And I was cleaning those [lights] above the - where the bed sits and I had stepped down out of the chair after I got through cleaning, and when I stepped down, my leg popped....It was a severe, sharp pain and it radiated up and down....into my hip and down into my knee. It just made my whole leg hurt."

The claimant signed a Form AR-N, Employee's Notice Of Injury, on February 1, 2009. The claimant wrote that her body part injured was "left upper leg (by knee)." The claimant wrote that the cause of injury was "step out of chair and felt a pop." The claimant received emergency treatment at White River Medical Center on February 1, 2009.

The claimant complained of left leg pain, "sharp pain over L lateral thigh just above the knee....denies any other injury. No previous injury." It was noted, "History obtained from patient....Historian reports injury. No neck pain, arthalgias, back pain." Physical examination of the claimant showed "ecchymosis over the L lateral thigh just superior to the knee joint, some swelling, good rom in knee and no evidence of injury to knee proper....Radiological interpretation of, the left femur shows, femur negative, no fracture, no foreign body, no bony lesion." The claimant was diagnosed with "muscle pain." In addition, a nursing assessment on February 1, 2009 indicated, "reports was stepping down off a chair and felt a pop, has a pain in left lateral upper thigh, hurts to walk on it, has a small knot above knee, reports it's bruised."

The claimant was prescribed medication, and was instructed to use a knee immobilizer and crutches for five days. The parties stipulated that the respondents "paid certain medical expenses and indemnity benefits" as a result of the claimant's compensable left leg injury.

The claimant received follow-up treatment on February 6, 2009: "Leg pain is slightly improved but still

categorized as severe, has bruise on lateral left thigh, swelling still present." Physical examination of the claimant's left lower extremity showed "lateral left thigh with healing ecchymosis, still tender to palpation, patient attempts to walk but pain is too severe." The claimant was diagnosed with "leg sprain." A physician noted, "We will order physical therapy and switch pain meds, no walking on leg for one week unless instructed by PT."

The claimant wrote on a Medical History Form dated February 10, 2009 that she had sprained her leg as the result of climbing out of a chair at work on February 1, 2009. The claimant received physical therapy beginning February 10, 2009, at which time a physical therapist noted that the claimant had been diagnosed with a left thigh strain. The physical therapist noted that the claimant injured her left lower extremity on February 1, 2009. The claimant was diagnosed with "iliotibial band strain" on February 12, 2009.

A representative of the respondent-carrier recorded an interview with the claimant on February 16, 2009:

Q. Okay, now I have your accident date as February 1st, does that sound about right?

A. Yes....

Q. And how did the accident happen?

A. I had been cleaning and high dusting the higher spots on the ceiling and above the windows and above the doors, and was using a wooden chair, a hard wooden chair. And I stepped down out of the wooden chair and felt a pop in the side of my leg. And that's when the knot came up....

Q. Which leg was it?

A. My left.

Q. And is it your lower leg or upper leg?

A. It's right above my knee in my thigh.

Q. Did you hurt any other part of your body?

A. No.

The claimant was diagnosed with "knee sprain" on February 19, 2009. The claimant followed up at White River Medical Center on March 6, 2009: "Re-check L hip and L knee strain - 'I just got done with my therapy I need some more pain medication' - now alert - No physical distress - Walks into triage without a limitation....MUSCULOSKELETAL: No neck pain, back pain." Physical examination of the claimant's lower extremity showed "inspection normal. No edema. Normal range of motion." The diagnosis was "PRIMARY: knee strain. ADDITIONAL: hip sprain." The claimant was instructed to follow up with her primary care physician if her problem persisted or worsened.

The record indicates that Dr. Anthony W. Lamkin saw the claimant on March 20, 2009:

Patient comes to the emergency room today with continued pain in the left hip and left thigh, the patient initially had pain in the knee from injury at work stepping off a chair. The patient with continued pain and has been to physical therapy and has helped with the knee but the hip is worse. The patient with some pain in the SI joint but none in the mid back....The patient with no swelling and no redness noted. Patient says that the knee is some better but the hip worse. Patient with no other recent fall or injury....

Triage assessment performed, RECHECK "IB BAND AND L KNEE STRAIN" - WORSE AFTER PICKING UP A LOT CANS IN THE YARD ...

Historian reports back pain, left hip and thigh and knee pain....Patient with no T spine tenderness noted, there is some mild L spine tenderness and left SI joint tenderness, there is no straight leg raise noted....

Dr. Lamkin's diagnosis on March 20, 2009 was "left hip, thigh, knee pain."

The claimant signed a Disability Claim Form on April 2, 2009. The claimant stated on the Disability Claim Form that an accident had occurred on February 1, 2009: "Stepping down from wooden chair, pop in leg - knot came up into thigh." The claimant stated on the Disability Claim Form that she sustained an "Injury to left leg, (hip, thigh & knee)."

The parties stipulated that the respondents "ceased paying benefits on April 3, 2009."

A physical therapist noted on April 14, 2009, "Pt last seen on 3/24/09. Pt has been referred to ortho and no new orders received. Spoke to pt today and pt requests discharge from PT at this time due to no orders from ortho MD. Will discharge at this time."

Dr. Shazia Siddiqui saw the claimant on May 11, 2009:

Patient works at WRMC, and had a fall (sic) few months ago that resulted in left thigh, left low back and left (sic) knee pain. Knee pain has improved after PT and knee immobilizer (sic)....

The patient complains of pain in back. The patient describes the pattern of pain as intermittent. The pain is throbbing and sharp deep and tender. The pain radiates to the left lower extremity and radiates to the left sided hip....

Musculoskeletal - Low Back muscles: Palpable trigger points noted. Left paravertebral muscles....

Dr. Siddiqui assessed Lumbosacral Spondylosis, Spinal Enthesopathy, and Spasm Of Muscle. Dr. Siddiqui recommended "left side only lumbar medial branch block." Dr. Siddiqui performed lumbar medial branch blocks on May 20, 2009 and June 17, 2009, and he performed a lumbar medial branch nerves neurotomy on July 9, 2009. The claimant followed up

with Dr. Siddiqui on August 10, 2009: "The patient is status post lumbar neurotomy. NO improvement in pain since procedure. The patient complains of pain in back. The pain has gotten progressively worse....The pain radiates to the left lower extremity and radiates to the left sided hip." Dr. Siddiqui assessed Lumbosacral Spondylosis, Spinal Enthesopathy, Spasm Of Muscle, and Lumbar Radiculitis. Dr. Siddiqui performed lumbar epidural steroid injections on August 26, 2009 and September 16, 2009.

The claimant signed a Form AR-C, Claim For Compensation, on September 23, 2009. The Accident Information section of the Form AR-C indicated, "Ms. Ashcraft was standing in a hardback chair, cleaning a room, dusting above lights above a bed. When she stepped down from the chair she stepped down on her right foot with her left foot still in the chair. She heard and felt a pop in her leg. A knot came up about mid-thigh of her left leg."

Dr. Siddiqui performed a lumbar epidural steroid injection on October 7, 2009. Dr. Siddiqui assessed Chronic Pain Syndrome on December 7, 2009, February 15, 2010, and April 12, 2010. Dr. Siddiqui performed a lumbar epidural steroid injection on June 17, 2010.

A pre-hearing order was filed on September 20, 2010. The claimant contended that there was "no intervening incident as alleged by the respondent to entitle them to stop paying benefits to the claimant. The claimant contends that she sustained a compensable injury and still is in need of medical care. The claimant is unable to work and is entitled to TTD (dates yet to be determined) and in the future an impairment rating."

The parties stipulated that the respondents "controverted any claim of injury to the low back and left hip." The respondents contended that they had "paid all benefits to which the claimant is entitled to receive as a result of her February 1, 2009 left leg injury. The claimant's present problems with her left leg, if any, were not proximately caused by her February 1, 2009 injury. The claimant did not sustain a compensable injury to her low back on February 1, 2009."

The parties agreed to litigate the following issues:

1. Constitutional issues.
2. Compensability of injuries to lower back and left hip.
3. Entitlement to additional benefits (left leg).
4. Entitlement to reasonably necessary medical care.
5. Entitlement to past due TTD (dates yet to be determined).

6. Entitlement to an impairment rating.
7. Controverted attorney fees.

Dr. Siddiqui's assessment on October 11, 2010 was Lumbosacral Neuritis, Lumbosacral Spondylosis, Sacroilitis, and Chronic Pain Syndrome. Dr. Siddiqui stated, "I do not recommend any steroid injection for her pain at this time. Because of high dose steroid therapy in past, required for mulpile (sic) lung problems along with back pain, she has developed cataracts and is soon to have surgery. I am starting her on Hyrrocodone (sic) for severe pain and she can continue Tramadol for moderate pain."

Dr. Siddiqui corresponded with the respondents' attorney on January 3, 2011:

This letter is in response to your request for my professional opinion in regards to two specific questions:

1. Can you state with a reasonable degree of medical certainty that the traumatic episode of 2/01/09 was the proximate cause of the current back and left hip pain of Ms. Ashcraft?

There is no complete medical certainty, but it is a possibility that this could occur.

2. Does Lumbosacral Spondylosis generally arise from a single traumatic event? If not, would you expect a contemporaneous onset of pain if the condition were aggravated by a single traumatic event?

Generally no. However if the patient already has a history of Lumbosacral Spondylosis and she has experienced a traumatic event, this could result in aggravation or exacerbation of the condition.

A hearing was held on February 22, 2011. At that time, the claimant reserved the issue of her entitlement to additional temporary total disability benefits and permanent anatomical impairment. The claimant testified, "My left knee still bothers me a whole lot."

An administrative law judge filed an opinion on May 20, 2011. The administrative law judge denied a motion for recusal by the claimant's attorney and found that the Workers' Compensation Act was constitutional. The administrative law judge found that the claimant proved she sustained a compensable injury to her back, but that the claimant failed to prove she sustained an injury to her hip. The administrative law judge found that the claimant proved she was entitled to reasonably necessary medical treatment, including additional medical treatment for the claimant's compensable left leg injury.

The respondents appeal to the Full Commission.

II. ADJUDICATION

A. Pleadings before the Commission

The claimant's attorney states on appeal to the Full Commission, "respondent seems to continue to do its best in worker's compensation claims to destroy the rights of its own loyal employees. Perhaps their unspoken excuse is their need to make a profit. But inserting false information in its medical records under its direction or control or failing to keep records that substantiate a worker's compensation injury is clear hypocrisy and a gross violation of their ethical responsibility to any patient and especially their own loyal employees. The undersigned's experience handling the lion's share of worker's compensation cases in the Batesville, Arkansas area is that there is overwhelming and clear examples that prove an adulterated irresponsibility by respondent regarding their ethical mandate to 'do no harm' to their employees and this hypocrisy must be addressed sooner rather than later."

Rule 11 of Arkansas Rules of Civil Procedure (2009) provides in pertinent part, "The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by

existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation....If a pleading, motion, or other paper is signed in violation of this rule, the court, upon proper motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee."

The primary purpose of Rule 11 sanctions is to deter future-litigation abuse. *Hodges v. Cannon*, 68 Ark. App. 170, 5 S.W.3d 89 (1999). The imposition of sanctions pursuant to Rule 11 is a serious matter to be handled with circumspection. *Id.* Additionally, an attorney's signature constitutes a certificate by him that to the best of his knowledge, information and belief formed after reasonable inquiry, it is well-grounded in fact and is warranted by existing law or a good faith argument for the extension,

modification, or reversal of existing law. Ark. Code Ann. §11-9-717(2) (B) (Repl. 2002). Appropriate sanctions can be imposed upon a person violating this rule upon motion or upon their (the Commission's) own initiative. Ark. Code Ann. §11-9-717(4) (Repl. 2002).

In the present matter, the respondents have not requested sanctions in accordance with Rule 11 or Ark. Code Ann. §11-9-717 with regard to counsel's statement of facts not supported by the evidence, *i.e.*, alleging that the respondents have inserted false information into the medical records. The Full Commission takes seriously compliance with these Rules and attorneys who practice before the Commission are expected to comply. Failure to do so may result in sanctions.

B. 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).

The employee has the burden of proving by a preponderance of the evidence that she sustained a compensable injury. Ark. Code Ann. §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, "10. The claimant failed to prove by medical evidence supported by objective findings an injury to her left hip." The claimant does not appeal the administrative law judge's finding that the claimant did not prove she sustained a compensable injury to her left hip. The

administrative law judge found, "9. The claimant proved by a preponderance of the evidence that she sustained a compensable injury to her back while working for the respondent-employer on February 1, 2009." The respondents appeal the administrative law judge's finding that the claimant sustained a compensable injury to her back.

The determination of witnesses' credibility and the weight to be given their testimony are matters exclusively within the province of the Commission. *Cooper v. Hiland Dairy*, 69 Ark. App. 200, 11 S.W.3d 5 (2000). However, the Commission may not disregard the testimony of any witness. *Crow v. Weyerhaeuser Co.*, 46 Ark. App. 295, 880 S.W.2d 320 (1994). An administrative law judge's findings with regard to credibility are not binding on the Full Commission. See *Roberts v. Leo Levi Hospital*, 8 Ark. App. 184, 649 S.W.2d 402 (1983); *Arkansas Coal Co. v. Steele*, 237 Ark. 727, 375 S.W.2d 673 (1964); *Moss v. El Dorado Drilling Co.*, 237 Ark. 80, 371 S.W.2d 528 (1963). It is the Full Commission's duty to conduct its own fact-finding independent of that done by an administrative law judge. *Crawford v. Pace Indus.*, 55 Ark. App. 60, 929 S.W.2d 727 (1996). The Full Commission has the duty to decide the case *de novo* and we are not bound

by the characterization of evidence adopted by the administrative law judge. *Tyson Foods, Inc. v. Watkins*, 37 Ark. App. 230, 792 S.W.2d 348 (1990).

In the present matter, the parties stipulated that the claimant sustained a compensable injury to her left leg on February 1, 2009. The claimant testified that her left leg "popped" after stepping down from a chair. The claimant signed a Form AR-N, Employee's Notice Of Injury, on February 1, 2009. The claimant wrote that she was injured after stepping out of a chair, and that her body part injured was "left upper leg (by knee)." The claimant did not report on the Form AR-N that she injured her back. The claimant received emergency treatment on February 1, 2009, when it was specifically noted, "sharp pain over L lateral thigh just above the knee....denies any other injury." The claimant wrote on a Medical History Form dated February 10, 2009 that she had sprained her leg as the result of climbing out of a chair at work. The claimant did not report on the Form AR-N or the Medical History Form that she had injured her back. The claimant participated in a recorded interview on February 16, 2009. The claimant stated in the recorded interview that she had injured her left leg, and the

claimant explicitly denied that she had injured any other part of her body.

The claimant informed Dr. Lamkin on March 20, 2009 that she had pain in her left hip and left thigh. Dr. Lamkin noted, "The patient with some pain in the SI joint but none in the mid back." A triage assessment on March 20, 2009 indicated that the claimant's left leg symptoms were worse after "picking up [a lot of] cans in the yard." The reported "picking up cans" incident is of no probative weight in determining whether or not the claimant sustained a compensable injury to her back. In any event, Dr. Lamkin's diagnosis on March 20, 2009 was "left hip, thigh, knee pain." We reiterate that the claimant does not appeal the administrative law judge's finding that the claimant did not prove she sustained a compensable injury to her hip. The claimant wrote on a Disability Claim Form dated April 2, 2009 that she had injured her "left leg, (hip, thigh & knee)." The claimant did not report on the Disability Claim Form that she injured her back.

The Full Commission finds that the claimant did not prove that she sustained a compensable injury to her back on February 1, 2009. The evidence of record does not

corroborate the claimant's contention that she sustained a compensable injury to her back on February 1, 2009. The claimant did not prove by a preponderance of the evidence that she sustained an accidental injury causing internal or external physical harm to her back. The claimant did not prove that she sustained an injury to her back which arose out of and in the course of employment, required medical services, or resulted in disability. The claimant did not prove by a preponderance of the evidence that she sustained an injury to her back which was caused by a specific incident or was identifiable by time and place of occurrence on February 1, 2009.

Nor did the claimant establish a compensable injury to her back by medical evidence supported by objective findings not within the claimant's voluntary control. The Full Commission recognizes Dr. Siddiqui's assessment of "Spasm of Muscle" on May 11, 2009, over three months after the compensable injury to the claimant's left leg. We note that Dr. Siddiqui's assessment was based in part on the claimant's inaccurate history given to her, *i.e.*, that the February 1, 2009 compensable injury had resulted in pain to the claimant's low back. There is no probative evidence of

record demonstrating that the claimant sustained any injury to her back or that the claimant suffered any low back pain as a result of the February 1, 2009 compensable injury to the claimant's left leg. Further, even if Dr. Siddiqui's assessment of muscle spasm was based on a palpable physical examination, the record does not demonstrate that this report of muscle spasm was causally related to the February 1, 2009 compensable injury to the claimant's left leg. The Court of Appeals has affirmed the Commission's denial of a claim when there is no evidence connecting a report of muscle spasm to an alleged work-related incident. See *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998).

Moreover, the Full Commission notes Dr. Siddiqui's correspondence with the respondents' attorney on January 3, 2011, where Dr. Siddiqui was asked to state "with a reasonable degree of medical certainty" whether the February 1, 2009 accident was "the proximate cause of" the claimant's back pain. Dr. Siddiqui replied, "There is no complete medical certainty, but it is a possibility that this could occur." Ark. Code Ann. §11-9-102(16) (B) (Repl. 2002) provides that medical opinions addressing compensability

"must be stated within a reasonable degree of medical certainty." A physician's causation opinion which is based upon a "possibility" lacks the definiteness required to meet the claimant's burden to prove causation pursuant to Ark. Code Ann. §11-9-102(16) (B) (Repl. 2002). See *West v. Stuttgart Regional Medical Center*, 2010 Ark. App. 620, citing *Frances v. Gaylord Container Corp.*, 341 Ark. 527, 20 S.W.3d 280 (2000). In the present matter, Dr. Siddiqui's causation opinion was not stated within a reasonable degree of medical certainty and cannot be relied upon to find that the claimant proved she sustained a compensable injury to her back.

C. 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 claimant must prove by a preponderance of the evidence that she is entitled to additional medical treatment. *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).

The parties stipulated in the present matter that the claimant sustained a compensable injury to her left leg on February 1, 2009. The claimant does not appeal the administrative law judge's finding that the claimant did not prove she sustained a compensable injury to her left hip. The Full Commission has found that the claimant did not prove by a preponderance of evidence that she sustained a compensable injury to her back. The claimant began treating for her compensable left leg injury at White River Medical Center on February 1, 2009. The claimant was diagnosed with muscle pain in her left leg. The claimant was subsequently diagnosed as having a leg sprain and a knee sprain. The claimant received physical therapy for her compensable left leg injury beginning February 10, 2009. The parties stipulated that the respondents ceased paying benefits on April 3, 2009. A physical therapist noted on April 14, 2009 that the claimant requested a discharge from physical therapy.

The claimant saw Dr. Siddiqui beginning May 11, 2009. Dr. Siddiqui treated the claimant for complaints of back

pain, and the Full Commission has determined that the claimant did not prove she sustained a compensable back injury. The evidence of record does not demonstrate that any of the treatment provided by Dr. Siddiqui was reasonably necessary in connection with the claimant's compensable left leg injury. The respondents are not liable for any of the treatment of record provided by Dr. Siddiqui.

However, the claimant testified at hearing that she still felt pain in her left knee. Neither party has asked the Commission to adjudicate whether the claimant remains within her healing period for the compensable left leg injury, and the Full Commission does not enter a finding with regard to whether or not the claimant has reached the end of her healing period. Nevertheless, the Full Commission finds that the claimant is entitled to additional conservative treatment for her left lower extremity, if such treatment becomes recommended by the claimant's previously-authorized treating physicians at White River Medical Center. The claimant has not proven that any treatment provided by Dr. Siddiqui was reasonably necessary in connection with the compensable injury to the claimant's left leg. There are currently no recommendations for

surgery to the claimant's left lower extremity, and the claimant has not proven that she is entitled to any form of surgery for her compensable injury. The Full Commission therefore affirms the administrative law judge's finding, "11. The claimant proved by a preponderance of the evidence her entitlement to additional medical treatment for her left leg injury of February 1, 2009." Said reasonably necessary medical treatment shall not include any additional visits with Dr. Siddiqui.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved she was entitled to additional medical treatment for the compensable injury to the claimant's left leg. The claimant did not prove that any treatment provided by Dr. Siddiqui was reasonably necessary. The Full Commission finds that the claimant did not prove she sustained a compensable injury to her back. For prevailing on the issue of additional medical treatment, the claimant's attorney is entitled to a fee of five hundred dollars (\$500), in accordance with Ark. Code Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. McKINNEY, Commissioner

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

CONCURRING AND DISSENTING OPINION

After a de novo review of the record, I agree with the majority that the claimant sustained a compensable leg injury. However, I find that the claimant also sustained a compensable back injury, and I must respectfully dissent on this issue. I also believe the majority has inappropriately addressed Rule 11 sanctions, and I must dissent from this issue as well.

Regarding the claimant's 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. If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997). I find that the claimant proved by a preponderance of the evidence that, in addition to her compensable left leg injury, she sustained a compensable injury to her back during the February 1, 2009 work incident.

Here, the claimant sustained an admittedly compensable left leg injury on February 1, 2009, as she stepped out of an 18-inch chair, while cleaning a room. Although the claimant did not report on the Form AR-N an injury to her back, the claimant credibly testified that she

did not realize she had any low back pain until she was allowed to do weight-bearing. In addition to this, her testimony demonstrates that she was on a lot of medications for her compensable left leg injury immediately following her compensable incident. The evidence demonstrates that the first medically-documented complaint of back pain was made on March 20, 2009. The claimant underwent initial evaluation by Dr. Siddiqui on May 11, 2009, due to complaints relating to her back. At that time, Dr. Siddique noted "palpable trigger points" of the lumbar back muscles. Thereafter, Dr. Siddiqui observed palpable trigger points of the lumbar spine, for which she performed several epidural steroid injections and a medication regimen.

On January 3, 2011, Dr. Siddiqui opined that there is no complete medical certainty that the traumatic episode caused the claimant's current back problems, but it is a possibility that this could occur. This statement by Dr. Siddiqui is not within the reasonable degree of medical certainty required of medical opinions. However, considering the claimant's lack of back symptoms prior to the incident, and considering the severity of the claimant's persistent history of back complaints since the incident, I

find that the claimant proved by a preponderance of the evidence a causal connection between her current back problems and the February 2009 incident. As the claimant has also produced objective findings of an injury, I find that the claimant has proved a compensable specific incident back injury, and I would award benefits accordingly.

As for the majority's discussion regarding Rule 11 sanctions, I must dissent. The respondent has not requested Rule 11 sanctions and it was not an issue before the Administrative Law Judge. While it may not be improper for the majority to raise the issue of sanctions on its own motion, it is, in this circumstance, inappropriate. I find that the majority has made the assumption that Rule 11 sanctions would apply to the paper discussed by the majority. In my opinion, the majority cannot make this assumption without further inquiry.

For the aforementioned reasons, I must respectfully concur, in part, and dissent, in part, from the majority opinion.

PHILIP A. HOOD, Commissioner