

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F905071

JOYCE COLEMAN, EMPLOYEE	CLAIMANT
CITY OF LITTLE ROCK, SELF-INSURED EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, CARRIER/TPA	RESPONDENT

OPINION FILED MAY 9, 2011

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

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

Respondents represented by the HONORABLE BETTY HARDY, 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 January 4, 2011.

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

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employee-employer-carrier existed among the parties on May 25, 2009, at a compensation rate of \$303.00/\$227.00. Some medical expenses were paid before this claim was controverted.

2. The claimant has failed to prove a causal connection between her symptoms and any incident at work based on negative diagnostic testing.
3. If they have not already done so, the respondents are directed to pay the court reporter, Linda Parker's, fees and expenses within thirty days of receipt of the bill.

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

After my de novo review of the entire record, I must respectfully dissent from the majority opinion, because I find that the claimant sustained a compensable injury for which she is entitled to medical and indemnity benefits, as well as an attorney's fee.

For the claimant to establish a compensable injury as a result of a specific incident, 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). I find that the claimant has met her burden to prove a compensable injury.

The Full Commission has affirmed and adopted the opinion of the Administrative Law Judge, which concluded in two brief paragraphs that the claimant was not entitled to benefits

under the Workers' Compensation Act, without giving due attention and consideration to the facts in the record.

The opinion stated that a strain was expected to heal within six weeks. This is rank speculation and unacceptable. Furthermore, if the claimant's symptoms lasted more than the "expected" six weeks, then the conclusion that the claimant had an injury other than a mere strain is far more reasonable than the conclusion that she had no injury. This is particularly true where lordotic changes and guarding were observed within nine days of the injury, Dr. Carle himself performed a trigger point injection and prescribed Flexeril a couple weeks later, and spasms and sacroiliac rotation were observed less than two months after the injury and less than three weeks after Dr. Carle's release.

The opinion also noted the absence of objective findings. However, there is evidence of objective findings of injury, despite Dr. Carle's pseudo-legal opinion to the contrary. On June 3, 2009, during her initial evaluation, the physical therapist observed increased lordosis in her lumbar spine, flat lordosis in her cervical spine, and guarding of her lumbar paraspinal muscles. Six days later, Dr. Carle himself performed a trigger point injection, leading to the conclusion that the claimant had a trigger point, which is another finding outside the claimant's control, and twelve days later, Dr. Carle

prescribed a muscle relaxer. On September 30, 2009, Dr. Carle wrote a letter to the respondent-carrier, insisting that the claimant did not have spasms and did not have a work-related injury. Dr. Carle's letter is questionable, given the trigger point injections and prescriptions for muscle relaxers and strong medications, narcotic and otherwise. Interestingly, close in time to Dr. Carle's injections and prescriptions, on July 19, 2009, Dr. Collins observed spasms and guarding in her paraspinous muscles on the right-side mid-thoracic area. A second physical therapist observed that the claimant had a posterior rotation of the sacroiliac joint, which caused an attenuation of sacral ligaments which caused pain in the buttock and low back.

The claimant gave a detailed description of the circumstances surrounding her injury to Dr. Carle at her first treatment for her injury. On May 25, 2009, she was vacuuming at work, and the vacuum "stuck" on the floor, causing her pain. Her reports of injury were consistent throughout the medical record. The claimant did not have back pain, until that day, and her pain has continued since that time. It is true that the claimant had other medical complaints in the past, including depression and anxiety; however, the record demonstrates that the claimant was able to perform her regular employment and a part-time job without pain, until May 25, 2009, when she injured her back. Since that time, she was disabled from her regular employment.

The claimant attempted to retain her job as a home health-type attendant, doing only a portion of her regular tasks - essentially on light duty within Dr. Carle's limitations, until her pain barred her from those limited activities as well, in December 2009. These facts, coupled with the claimant's consistent complaints of pain, Dr. Carle's treatment, and Dr. Collins' treatment and observations, show that the claimant indeed suffered a new injury to her spine in May 2009, either a totally new injury or an event which turned her degenerative changes from asymptomatic to symptomatic.

There is no question that the claimant's activity, vacuuming, was part of her normal employment activity or that her pain began at a specific time and place on May 25, 2009. As noted above, there are objective findings evidencing her injury, which has caused disability and a need for treatment, and which arose out of her work on that date. There is no evidence of any other cause of injury.

Dr. Carle, the respondent-carrier's physician, suggested that the claimant's pain had non-physiologic origins, on June 30, 2009, after less than a month of care. Interestingly, Dr. Collins' observations of spasm and the therapist's observation of sacroiliac rotation followed close upon the heels of Dr. Carle's release of the claimant. Dr. Carle and the majority felt that the claimant did not have an injury

because certain diagnostic testing was negative. The claimant may not have had x-ray or MRI evidence of injury, but she had objective signs of injury, pain, and limitations. The Workers' Compensation Act does not require an immediate or exacting diagnosis for compensability. The majority applied a standard not found in the Act.

The claimant was released prematurely by Dr. Carle, after less than thirty days of treatment. From the date of her injury, the claimant's symptoms increased over time, so that, by September 2009, the claimant had radicular pain into her foot. Her symptoms did not improve and, through January 2010, the records show that Dr. Collins observed spasms. This timeline does not suggest anything that is not regularly seen in back injury claims. Symptoms manifest over time, and conditions deteriorate without adequate treatment. Dr. Collins and the second physical therapist made diagnoses and treatment plans, which have been "stymied" by the respondent-carrier.

The claimant did suffer from stress, depression and anxiety in the past, and from the time of her injury to date. Dr. Collins, in November and December 2009 and January 2010, noted that the claimant's pain and her inability to make progress with her treatment due to the carrier's unwillingness to approve sacroiliac injections was causing depression and anxiety. There is nothing in the Act that says that a person with other medical

issues cannot have a compensable injury. The claimant's other issues are exacerbated by the compensable injury in this case, perhaps making treatment more difficult, but certainly not absolving the respondents of liability. The claimant's injury, not her anxiety or depression, is the cause of her need for treatment and her disability.

Lastly, I note the opinion's comment that the claimant's part-time work "clouded" the issue of causation. There is no evidence that the claimant was injured other than on May 25. The claimant testified that she did continue to work as a home health-type attendant, but that she was unable to perform and did not perform most of her duties due to her pain. The claimant's medical records do not indicate a major change in her complaints or in the medical professionals' observations. The difference in Dr. Carle's and Dr. Collins' opinions are a matter of "spin." As stated above, there was indeed objective evidence of injury from June 3 forward. The difference is that Dr. Carle made a prejudicial decision, based upon his employment as a company doctor, the opportunity to place the blame for her pain on non-physiologic factors, or a misunderstanding of the law in Arkansas regarding objective findings. It matters not. Take away the "spin," and the medical records show that the claimant had a consistent history of injury and of symptoms, which increased over time in a logical progression, coupled with the

objective findings from June 3, 2009 to January 2010. The issue of causation is not clouded by the fact that the claimant continued in a part-time job in which she was able to perform extremely limited duties, within her limited abilities, as compared to the variety of physical tasks which she had been able to perform prior to May 25.

The claimant is entitled to temporary total disability benefits from July 30, 2009, when Dr. Carle released the claimant from treatment based upon his pseudo-legal opinion that workers' compensation no longer applied, to a date yet to be determined. Dr. Carle's release was based upon the fact that she had pain and extraneous pain behavior, with no objective findings of injury. However, there were objective findings prior to this date and soon after this date, the claimant did have pain, and Dr. Collins and the physical therapist were able to make a diagnosis of a sacroiliac injury and to plan - if not implement - a course of treatment. The claimant has not yet reached maximum medical improvement and remains unable to work, due to her inability to receive the recommended treatment.

I must respectfully dissent from the majority opinion affirming and adopting the brief opinion of the Administrative Law Judge for two reasons. First, without regard to the final outcome, the opinion fails to adequately address the evidence and relies on speculation and unsupported conclusion. Second, the

preponderance of the evidence supports the finding that the claimant sustained a compensable injury for which she is entitled to benefits.

For her compensable injury on May 25, 2009, I would award the claimant medical benefits, including all treatment to date and Dr. Collins' recommended treatment, as well as indemnity benefits, and an attorney's fee.

For the foregoing reasons, I respectfully dissent from the majority opinion.

PHILIP A. HOOD, Commissioner