

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G908347

GEOFFREY BRUDER, EMPLOYEE CLAIMANT

PINNACLE FOODS GROUP, LLC.,
EMPLOYER RESPONDENT

ACE AMERICAN INSURANCE CO.,
INSURANCE CARRIER/TPA RESPONDENT

OPINION FILED APRIL 26, 2021

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

Claimant represented by the HONORABLE EVELYN E. BROOKS, Attorney at Law, Fayetteville, 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

Respondents appeal an opinion and order of the Administrative Law Judge filed September 15, 2020. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The proposed stipulations set forth above are hereby accepted as fact.

3. The claimant has proven by a preponderance of the evidence that he suffered a compensable back injury on November 18, 2019.
4. Claimant has further proven by the same standard that he is entitled to reasonable and necessary medical treatment for the treatment of his compensable injury.
5. Claimant has also proven by a preponderance of the evidence that he is entitled to temporary total disability from November 19, 2019 through January 1, 2020.
6. The claimant's attorney is entitled to a fee based on the above findings.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's September 15, 2020 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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. §11-9-809 (Repl. 2012).

For prevailing on this appeal before the Full Commission, claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. § 11-9-715(Repl. 2012). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Palmer dissents.

DISSENTING OPINION

I respectfully dissent from the majority opinion finding that the Claimant proved by a preponderance of the evidence that 1) he sustained a compensable back injury on November 18, 2019; (2) that Claimant is entitled to reasonable and necessary medical treatment for treatment of his compensable back injury; and (3) that Claimant is entitled to temporary total disability benefits from November 19, 2019 through January 1, 2020.

I have conducted a thorough review of the record in this case and, as

set out more fully below, find Claimant's testimony to be less than credible. Given that his testimony is the only proof that his degenerative condition was exacerbated by the alleged workplace incident, I would find that Claimant failed to prove he sustained a compensable injury.

Claimant testified that he was injured at work on November 18, 2019. According to Claimant, he was pushing a heavy cart (600-800 pounds) up a 6-inch grade onto a scale when he felt some pain in his back. Claimant made no mention of this alleged injury to anyone at the time, and instead continued working without any trouble. He says he thought he had just pulled a muscle and that it would go away so he went home that evening and took some ibuprofen.

Claimant testified that the next day – which would have been November 19 – he was at work putting together boxes when he felt excruciating pain shooting down his leg and back. After Claimant began experiencing this pain, he leaned against a box to rest. At some point, the plant's safety officer walked by and noticed Claimant leaning against a box. The two did not have any conversation because the plant's machinery was too loud. Instead, the two gestured at one another and the safety officer continued with his routine walkthrough. Notably, Claimant recognized the safety officer but did not flag him down to notify him that he was injured.

At some point, Claimant's supervisor, Mike Martin came to where

Claimant was resting on the box. Claimant testified that Mr. Martin asked Claimant “what was going on.” Claimant told him that he had hurt his back, needed to get to the doctor, and was in a lot of pain. It is undisputed that Claimant did not then tell Mr. Martin that he had been injured at work. When asked why he did not inform Mr. Martin that his injury occurred at work, Claimant said, “I don’t know.” Claimant said he then “hobbled out of there . . . went to [his] truck and went to the doctor.” Claimant says he left that day and went to his doctor; however, there are no medical records from November 19 in evidence.

Claimant admitted that he was trained on the procedure for reporting workplace injuries and that he did not follow those procedures. For example, Claimant did not inform anyone at the plant that he had been injured at work. It was not until December 26, 2019 -- over a month after the alleged incident -- that Claimant first suggested to his employer that he had allegedly been injured at work. Likewise, instead of filing an incident report form, Claimant filed for FMLA disability. Additionally, rather than file for workers’ compensation benefits at the time, Claimant used his personal medical insurance to cover the cost of treatment.

Claimant testified that he was treated by his primary care doctor, Dr. Garland Thorn, on November 19, 2019. There is no evidence of this visit in the record. Claimant also testified that he had a CT scan; however, there is

no CT scan in evidence.

Dr. Charles Musgrove treated Claimant in the emergency room on November 21, 2019. According to records from this visit (the earliest medical records in evidence), Dr. Thorn “never did (sic) any imaging of back.” Dr. Musgrove diagnosed Claimant with a lumbar-spine strain and treated him with pain medicine. Dr. Musgrove’s diagnosis was based in part on Claimant’s CT scan (which, again, is not in the record). According to Dr. Musgrove’s notes, the “CT was negative for renal calculi.” The notes also suggest that Claimant “appear[s] to have some decreased space in his lower L-spine, which makes presentation (sic) were consistent with severe spinal muscle strain and subsequent sciatica down right leg.”

Claimant was treated by Dr. Eric Bell at Lifespan Chiropractic on November 23 and 25, 2019. On November 23, Dr. Bell diagnosed Claimant with “radiculopathy of lumbar region” and “segmental and somatic dysfunction” of lumbar and sacral regions. Dr. Bell referenced Claimant’s ER visit on November 19 and noted, “Pt was x rayed,¹ MD didn’t see any fractures, pt was told he likely had a disc issue.” Dr. Bell recorded the following:

Segmental joint dysfunction and palpatory tenderness in the

¹ There is nothing in the record to indicate that Claimant had an X-ray. Although the results of the CT scan are not in the record, it appears that Dr. Musgrove did order a CT scan on November 21. I assume this is the imaging to which Dr. Bell is referring.

lumbar spine at the following levels: L4 and L5. There is restriction and palpable tenderness in the lumbar spine. Inter-segmental joint dysfunction was noted in the pelvis.

Dr. Thorn treated Claimant on November 25, 2019 and diagnosed him with a lumbar sprain. Note this is different than the lumbar *strain* that Dr. Musgrove suggested on November 21.

Dr. Thorn treated Claimant again on December 2, 2019. This time, Dr. Thorn diagnosed Claimant with “lumbar radicular pain” and “lumbar paraspinal muscle spasm.” Nothing in the medical record from this visit suggests how Dr. Thorn ascertained these diagnoses. The record does suggest that Claimant’s “right [lumbar spine] area” was “tender.” Dr. Thorn referred Claimant to physical therapy; however, there is no medical records from Claimant’s physical therapy in evidence.

Dr. James Blankenship treated Claimant on March 16, 2020. Dr. Blankenship noted that Claimant had an MRI in December (not in the record), but that his neurologic examination reveals an LF radiculopathy. Dr. Blankenship suspected an extreme lateral disc herniation at L4-L5. Dr. Blankenship told Claimant that his “best guess with the clinical history he has provided as to what happened was that he had an annular fissure occur with his original injury and then the next day with a twisting actually ruptured the disc out.” Again, all this despite Dr. Blankenship’s admission that the MRI from December (which is not in the record) did not allow him to

evaluate the situation. Then Dr. Blankenship eagerly provided his unsolicited medical opinion that Claimant's "current problem" is work-related — "the mechanism of injury fits." Again, this based on an MRI that is not in the record that Dr. Blankenship admitted was not clear enough to allow him to evaluate Claimant's "current problem."

In May 2020, Claimant had another MRI which revealed multilevel degenerative disc disease and facet arthrosis, a disc extrusion, and a cyst.

The impression from the MRI reads as follows:

1. Multilevel degenerative disc disease, as detailed above, most severe at L5-S1. There is only mild central canal narrowing most pronounced at L5-S1. There is at least moderate neural foraminal narrowing at L4-L5 as well as moderate to severe right and at least moderate left-sided neural foraminal narrowing at L5-S1.
2. Of note, the patient has a focal disc extrusion at L2-L3 in the far right lateral foraminal/extraforaminal region. This results in relatively mild right-sided foraminal narrowing at this level although the exiting nerve root may be compressed in the extraforaminal region.
3. Additionally, there is a 7-8mm cyst along the posterior aspect of the right L5-S1 neural-foraminal which is likely a synovial facet cyst. This contributes to the foraminal narrowing in this region.

In June 2020, Claimant underwent a couple sessions of physical therapy relating to his lumbar-spine pain.

Other than Claimant's historical account to his treating physicians, and Dr. Blankenship's unsolicited opinion – which, again, was based on

Claimant's historical accounting and imaging that Dr. Blankenship admitted did not allow him to evaluate Claimant's injuries – nothing in the record indicates that Claimant sustained a workplace injury. Claimant's account of his injury is belied by the fact that he did not mention a workplace injury to his employer for over a month, by the fact that he filed his injury under FMLA disability, and – most saliently – by the fact that Claimant's MRI reveals multilevel degenerative disc disease and arthrosis. Nothing suggests the cyst at the L5-S1 level or the focal disc extrusion at L2-L3 were caused by any workplace incident.

Because the best evidence as to the cause of Claimant's injury is the MRI in the record, and because the MRI suggests that Claimant's injuries stem from multilevel degenerative disc disease and arthrosis, I would find that Claimant did not prove he sustained a compensable injury.

Accordingly, for the reasons set forth above, I must dissent from the majority opinion.

CHRISTOPHER L. PALMER, Commissioner