

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO.: H001447**

JERLENE J. DUNCAN, Employee	CLAIMANT
EARLE ELEMENTARY SCHOOL, Self-Insured Employer	RESPONDENT
ARKANSAS SCHOOL BOARDS' ASSOCIATION WORKERS' COMPENSATION TRUST, Carrier/TPA	RESPONDENT

**OPINION AND ORDER FILED OCTOBER 6, 2021**

Hearing conducted before ADMINISTRATIVE LAW JUDGE TERRY DON LUCY, in Crittenden County, Arkansas.

Counsel for the Claimant: *pro se*.

Counsel for the Respondents: HONORABLE MELISSA M. WOOD, Attorney at Law, Little Rock, Arkansas.

**Statement of the Case**

The above-captioned matter came on for a full hearing on the merits on July 16, 2021, before the undersigned Administrative Law Judge. A pre-hearing Order was entered in this matter on March 4, 2021, which reflected the following stipulations:

- (1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim;
- (2) The employee/employer/TPA relationship existed on August 26, 2019, on which date the Claimant sustained a work-related injury to her back which the Respondents accepted as a compensable medical-only claim and have paid certain benefits related to such; and,
- (3) The Claimant's average weekly wage on the date of injury was sufficient to entitle her to the maximum compensation rates in effect for 2019.

The pre-hearing Order also reflected the issues to be adjudicated, as set forth below:

- (1) Whether the Claimant is entitled to additional benefits in relation to her compensable injury of August 26, 2019, inclusive of additional reasonably necessary medical care and related expenses,

and temporary total disability benefits for the period of August 27, 2019, through a date yet to be determined; and,

(2) Whether the Claimant has sustained a compensable mental injury within the meaning of Ark. Code Ann. §11-9-113 in relation to her compensable injury of August 26, 2019.

All other issues were reserved. Following preliminary discussions, the pre-hearing Order of March 4, 2021, was introduced into evidence as Commission's Exhibit No. 1 without objection. (TR 8-9) The Respondents' medical evidence was likewise introduced into evidence as Respondents' Exhibit No. 1 without objection. (TR 10) Further, the Respondents' non-medical documentary evidence was also introduced into evidence as Respondents' Exhibit No. 2 without objection. (TR 11) The Claimant offered no documentary evidence in support of her present claim. (TR 11-12)

### **Findings of Fact and Conclusions of Law**

(1) The parties' stipulations are accepted as findings of fact herein, inclusive of the Commission's jurisdiction over this claim;

(2) The Claimant has failed to prove, by a preponderance of the evidence, that she is entitled to additional medical benefits or temporary total disability benefits in relation to her initially compensable physical injury of August 26, 2019; and,

(3) The Claimant has failed to prove, by a preponderance of the evidence, that she sustained a compensable mental injury within the meaning of Ark. Code Ann. §11-9-113 in relation to her compensable injury of August 26, 2019.

(4) All other issues are rendered moot.

### **Applicable Law**

The party bearing the burden of proof in a workers' compensation matter must establish such by a preponderance of the evidence. See Ark. Code Ann. §§11-9-704(c)(2) and 11-9-

705(a)(3). With respect to medical treatment in association with a compensable injury, Ark. Code Ann. §11-9-508(a)(1) states that:

The employer shall promptly provide for an injured employee such medical, surgical, hospital, chiropractic, optometric, podiatric, and nursing services and medicine, crutches, ambulatory devices, artificial limbs, eyeglasses, contact lenses, hearing aids, and other apparatus as may be reasonably necessary in connection with the injury received by the employee.

In addition, it is well-known that temporary total disability benefits in relation to an unscheduled injury, such as that involved in the present matter, are payable during such time that a Claimant remains in a healing period and is totally incapacitated from earning wages. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244 (1981) Finally, in relation to alleged mental injuries, Ark. Code Ann. §11-9-113(a)(1) and (2) require that:

(1) A mental injury or illness is not a compensable injury unless it is caused by physical injury to the employee's body, and shall not be considered an injury arising out of and in the course of employment or compensable unless it is demonstrated by a preponderance of the evidence; provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence.

(2) No mental injury or illness under this section shall be compensable unless it is also diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders.

**Testimony**

**Jerlene Duncan**

Upon direct examination by the Commission, the Claimant essentially testified that her injury of August 26, 2019, occurred as the result of her attempt to intervene in an altercation involving several sixth-grade students. (TR 13-14; see also TR 18-19) Further discussion of the Claimant's testimony upon direct examination by the Commission is not necessary with respect to

the findings of fact herein reached. Likewise, discussion of the Claimant's testimony upon cross-examination, while reviewed and taken into consideration, is not necessary with respect to the findings of fact herein reached.

### **Medical/Documentary Evidence**

It is apparent that the Claimant sought treatment for Post Traumatic Stress Disorder as early as January 11, 2013. (RX 1 at 1-4) The only post-incident medical records introduced into evidence are from Dr. James Beaton with respect to his evaluation of the Claimant on August 27, 2019. Therein, Dr. Beaton offered no further treatment with respect to the Claimant's back complaints. (RX 1 at 31-34) For the reasons noted below, further discussion of Respondents' Exhibits Nos. 1 and 2 is not necessary with respect to the findings herein reached.

### **Adjudication**

I note that the Claimant was a polite and courteous witness. However, I cannot overlook the fact that she has submitted no medical evidence to support her claim for an alleged mental injury as a result of the incident of August 26, 2019, that would meet the requirements of Ark. Code Ann. §11-9-113. I also cannot overlook the fact that the Claimant has submitted no medical evidence that would support her claim for additional medical treatment or temporary total disability benefits in relation to the same incident. The only post-incident medical evidence is that from Dr. Beaton dated August 27, 2019, in which no further treatment for the Claimant's back injury was recommended. Consequently, I am compelled to find that the Claimant has failed to meet her burden of proof with respect to the benefits sought in the present matter.

### **ORDER**

Based on the foregoing discussion, including my observation of the witness and her testimony, review of the hearing transcript, the documentary evidence supplied by the

Respondents, and application of the statutory and case law cited above, I specifically find that the Claimant has failed to prove, by a preponderance of the evidence, that she sustained a compensable mental injury in relation to the incident of August 26, 2019, and has likewise failed to prove that she is entitled to additional reasonably necessary medical care and temporary total disability benefits from August 27, 2019, to a date yet to be determined, in association with the same incident.

This claim is respectfully denied and dismissed, and the Respondents are ordered and directed to pay the Court Reporter's fee within thirty days of billing for such if they have not already done so.

IT IS SO ORDERED.

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TERRY DON LUCY  
Administrative Law Judge