

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO.: H007804**

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| JESSICA EUBANKS, Employee                  | CLAIMANT   |
| CITY OF LITTLE ROCK, Self-Insured Employer | RESPONDENT |
| RISK MANAGEMENT RESOURCES, TPA             | RESPONDENT |

**OPINION AND ORDER FILED AUGUST 10, 2021**

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

Counsel for the Claimant: HONORABLE EMILY S. PAUL, Attorney at Law, Little Rock, Arkansas.

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 hearing on May 25, 2021, before the undersigned Administrative Law Judge. A pre-hearing Order was entered in this matter on April 7, 2021, which reflected the following stipulations:

- (1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim;
- (2) The employee/employer/TPA relationship existed at all relevant times;
- (3) The Claimant's average weekly wage on the date of injury was sufficient to entitle her to compensation rates of \$695.00 and \$521.00 for temporary total and permanent partial disability benefits, respectively; and,
- (4) The Respondents have controverted this claim in its entirety.

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

- (1) Whether the Claimant sustained a compensable injury on September 25, 2020, and is entitled to appropriate benefits associated therewith.

All other issues were reserved. During preliminary discussions, the parties clarified that indemnity benefits were not at issue in the present proceedings and that the Claimant sought reasonably necessary medical care and related expenses in association with alleged compensable injuries to her lower back and right hip, along with persistent headaches, sustained on September 25, 2020. Conversely, the Respondents contend that the Claimant was not performing employment services or otherwise acting in the course and scope of her employment and also cannot establish her alleged compensable injuries with medical evidence supported by objective findings. (TR 6-7; 23) Thereafter, the Commission's pre-hearing Order of April 7, 2021, was introduced into evidence without objection. (TR 9) The parties' respective exhibits were likewise introduced into evidence without objection. (TR 9-11)

### **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 sustained compensable injuries to her lower back, right side, right hip, or any compensable consequences related thereto such as persistent headaches, in relation to an incident that occurred on September 25, 2020; and,
- (3) 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 "specific incident" injuries, a claimant must prove, by a preponderance of the evidence, that he or she sustained an "accidental injury causing internal or external physical harm to the body...arising out of and in the course of employment" and which is identifiable by

time and place of occurrence. Ark. Code Ann. §§11-9-102(4)(A)(i) and (E)(i). The alleged injury must also occur at a time when “employment services” were being performed and must be established by medical evidence supported by “objective findings.” Ark. Code Ann. §§11-9-102(4)(B)(iii) and (D). In turn, “objective findings” are those findings “which cannot come under the voluntary control of the patient.” Ark. Code Ann. §11-9-102(16)(A)(i).

Also, it is long-settled those questions concerning the credibility of witnesses and the weight to be given their testimony are within the exclusive province of the Commission. (See, for instance, *Yates v. Boar’s Head Provisions Co.*, 2017 Ark. App. 133 (2017). It is further well-settled that determinations of compensability may turn solely upon matters of weight and credibility, particularly when such matters relate to a given claimant’s credibility. (See *Yates, supra*. In addition, see *Daniel v. Wal-Mart Stores, Inc.*, 2014 Ark. App. 671 (2014); *Kanu-Polk v. Conway Human Dev. Ctr.*, 2011 Ark. App. 779 (2011); and *Lee v. Dr. Pepper Bottling Co.*, 74 Ark. App. 43 (Ark. App. 2011)). Finally, a claimant’s testimony is never considered to be uncontroverted. *Gentry v. Ark. Oil Field Servs.*, 2011 Ark. App. 786 (2011) (citing *Nix v. Wilson World Hotel*, 46 Ark. App. 303 (1994)).

### **Testimony**

#### **Jessica Eubanks**

The Claimant, a police officer for the City of Little Rock, testified that on September 25, 2020, a fellow officer (homicide detective) had to cover a homicide and needed her to cover his extra-duty work. (TR 13) Accordingly, the Claimant put on her uniform, entered her assigned take-home vehicle, and proceeded to drive to Pulaski Academy to direct traffic for the requesting fellow officer. (*Id.*) While enroute at approximately 7:15-7:20 a.m., the Claimant's vehicle was sideswiped "from the back" on the right side as she negotiated a curve on Colonel Glenn West, by

another vehicle. (TR 13; 15; see also CX 2 at 1). Following the collision, the Claimant engaged her lights and siren and pursued the other vehicle, which had simply continued driving westbound on Colonel Glenn, and managed to pull it over it in a parking lot two blocks past the site of the collision. (TR 14) Thereafter, the Claimant immediately checked on the welfare of the occupants of the other vehicle and summoned appropriate personnel to assist with further handling of the occurrence. (*Id.*)

With respect to her take-home vehicle, in essence, the Claimant explained that such is an unmarked unit with lights and a siren built into it which cannot easily be identified as a law enforcement vehicle. (TR 15) The Claimant further testified that "the City sent me to Concentra, and so I went there and they gave me muscle relaxers and pain medicine. They gave me physical therapy that day, I think it was. I only got to go once." (TR 21)

While I have reviewed the entirety of the Claimant's subsequent testimony, inclusive of further direct and cross-examination, discussion of such is not necessary for the findings herein reached.

#### Zachary Farley

While I have reviewed the entirety of Lieutenant Zachary Farley's testimony, discussion of such is not necessary for the findings herein reached.

#### Medical/Documentary Evidence

I have reviewed the entirety of the medical and documentary evidence submitted herein by both parties, the most salient and relevant of which reflects that the Claimant presented to Dr. Scott Carle on September 30, 2020, some five days after her motor vehicle collision of September 25, 2020. Dr. Carle's plan included starting Meloxicam (Mobic), and also noted that the Claimant's present medications included such along with Methocarbamol and Tizanidine -- the latter two of

which are well-known muscle relaxants. (CX 1 at 1-2) However, with respect to Dr. Carle's physical examination of the Claimant on September 30, 2020, there were no spasms affecting either her lumbar or cervical spine. (CX 1 at 4) The remainder of the medical records submitted on behalf of the Claimant consist of her sole presentation for physical therapy on October 1, 2020, and do not contradict Dr. Carle's physical findings. (CX 1 at 5-11)

### **Adjudication**

#### **Compensable Injuries**

Although I considered the Claimant to be a credible witness, I cannot overlook the fact that there are no objective findings to support her alleged injuries. While I am aware that Dr. Carle prescribed muscle relaxants for the Claimant's alleged compensable injuries on September 30, 2020, and that the prescription of such can be regarded as evidence of objective findings, I am equally aware that Dr. Carle's physical exam on such date revealed no spasms affecting the Claimant's lumbar spine. (See *Fred's, Inc. v. Jefferson*, 368 Ark. 258 (2005) and *Rodriguez v. M. McDaniel Co.*, 98 Ark. App. 138 (2007)). Accordingly, I am unwilling to conclude that Dr. Carle's prescription of muscle relaxant medications on September 30, 2020, amount to medical evidence supported by objective findings of injury that would satisfy the requirements of Ark. Code Ann. §11-9-102(4) with respect to an alleged lumbar injury. Further, the medical evidence is entirely lacking with respect to the Claimant's alleged right-side and right-hip injuries, as well as her alleged persistent headaches.

For such reasons, I respectfully find that the Claimant has failed to prove, by a preponderance of the evidence, that she sustained compensable injuries to her lower back, right side, right hip, or any compensable consequences such as persistent headaches related thereto as a result of the incident that occurred on September 25, 2020.

Employment Services/Course and Scope of Employment

In light of the findings made above, I respectfully decline to reach the issue of whether the Claimant was engaged in employment services or otherwise acting in the course and scope of her employment during the incident that occurred on September 25, 2020, and regard such as moot.

**ORDER**

Based on the foregoing discussion, including my observation of the witnesses and their testimony, review of the hearing transcript, the documentary evidence supplied by the parties, 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 compensable injuries to her lower back, right side, right hip, or any compensable consequences related thereto such as persistent headaches.

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 if they have not already done so.

IT IS SO ORDERED.

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TERRY DON LUCY  
Administrative Law Judge