

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H000302

SHIRLEY GOODNIGHT, EMPLOYEE	CLAIMANT
LITTLE ROCK SCHOOL DIST., SELF-INSURED EMPLOYER¹	RESPONDENT
ARK. SCHOOL BOARDS ASSN., THIRD-PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED MARCH 30, 2021

Hearing before Administrative Law Judge O. Milton Fine II on March 18, 2021, in Little Rock, Pulaski County, Arkansas.

Claimant *pro se*.

Respondents represented by Mr. Jarrod S. Parrish, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 18, 2021, the above-captioned claim was heard in Little Rock, Arkansas. A prehearing conference took place on January 11, 2021. The Prehearing Order entered on January 13, 2021, pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

Stipulations

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit 1. They are the following, which I accept:

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1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/self-insured employer relationship existed on July 30, 2019, when Claimant sustained a compensable injury to her lower back in the form of an aggravation of her pre-existing degenerative lower back condition as a result of a work-related fall.
3. Respondents accepted the above injury as compensable and have paid benefits pursuant thereto. However, they have controverted Claimant's alleged dental injuries.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit

1. The following were litigated:

1. Whether Claimant sustained a compensable injury to her teeth.
2. Whether Claimant is entitled to reasonable and necessary medical treatment.

All other issues have been reserved.

Contentions

The respective contentions of the parties, following an amendment at the hearing, read as follows:

¹By agreement of the parties, the identity of the respondent employer was changed to accurately reflect that it is the Little Rock School District.

Claimant:

1. Claimant contends that on July 30, 2019, she sustained injuries to her teeth as a result of a work-related fall. She further contends that she is entitled to reasonable and necessary treatment of this injury.

Respondents:

1. Respondents contend that all appropriate benefits have been paid regarding this matter. Claimant has reached maximum medical improvement associated with her aggravation. She was released to return to work in a full-duty capacity, and no impairment rating has been assigned. It is Respondents' position that additional medical treatment is not reasonable and necessary, and that the medical documentation does not support entitlement to additional benefits associated with her claim.
2. Respondents further contend that Claimant did not suffer a compensable injury to her teeth on July 30, 2019.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe her demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

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2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has not proven by a preponderance of the evidence that she sustained a compensable injury to her teeth.
4. Claimant has not proven by a preponderance of the evidence that she is entitled to reasonable and necessary treatment of her alleged dental injury.

ADJUDICATION

Summary of Evidence

Claimant was the sole witness.

Along with the prehearing order discussed above, the exhibits admitted into evidence in this case were Claimant's Exhibit 1, dental records, consisting of two pages; Respondents' Exhibit 1, a compilation of her medical/dental records, consisting of one index page and 14 numbered pages thereafter; and Respondents' Exhibit 2, non-medical records, consisting of one index page and 18 numbered pages thereafter.

Adjudication

A. Compensability

Introduction. As the parties have stipulated, Claimant on July 30, 2019, sustained a compensable injury to her lower back, which came in the form of an aggravation of her pre-existing degenerative condition. Herein, she is asserting that in that same specific incident, she suffered compensable injuries to her teeth as well. Respondents dispute that she suffered a compensable injury of this type.

Standards. In order to prove the occurrence of an injury caused by a specific incident or incidents identifiable by time and place of occurrence, a claimant must show that: (1) an injury occurred that arose out of and in the course of her employment; (2) the injury caused internal or external harm to the body that required medical services or resulted in disability or death; (3) the injury is established by medical evidence supported by objective findings, which are those findings which cannot come under the voluntary control of the patient; and (4) 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). If a claimant fails to establish by a preponderance of the evidence any of the above elements, compensation must be denied. *Id.* The standard “preponderance of the evidence” means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415 (citing *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947)).

The determination of a witness’s credibility and how much weight to accord to that person’s testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

Discussion. As documented by Drs. Richard Wiedower and Richard Hixson, DDS, Claimant has objective findings of a dental injury in the form of fractured teeth

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nos. 3 and 30. This injury caused internal or external harm to the body that required medical (dental) services. Moreover, as the parties have stipulated—and I have accepted—Claimant was performing employment services on July 30, 2019, when she sustained a work-related fall. What remains to be determined, however, is whether she has proven that this same fall caused her dental injuries.

Claimant, who is 61 years old and has a master’s degree, testified that on the above date, she was an employee of the respondent school district. She was on the campus of JA Fair High School, where she taught science and coached basketball, for professional development. As she was walking on the freshly-waxed floor of the school’s lobby, “my feet slip[ped] out from under me.” As she fell, she threw aside the items that she had been carrying and slid face-forward on the floor. Her knees and her right side made contact with the ground.

The following exchange occurred:

- Q. Now, we’re here because you’ve also alleged that in addition to the stipulated back injury that you suffered, that you also suffered some kind of dental injury. So I want to talk about that a little bit.
- A. Okay.
- Q. Did your face or something strike the floor, or what happened to your face or your jaw when you fell?
- A. I’m not sure if my face actually hit the floor or not, or if I fell and my teeth clamped down. You know, when you have a sudden jar like that, I don’t know if you’ve ever played sports, but playing softball and basketball and things, I’d fallen hard enough to pop my neck or, you know, clench—you know, make your jaws slam together, you know, that kind of thing. I didn’t realize my teeth were hurt when I first fell. I mean, my body was, like, oh, and I didn’t think anything

. . .

Q. So you don't know definitely whether or not your face or your chin or your jaw hit the ground?

A. No, I don't know that for sure, no, sir.

Q. Okay. Do you know yes or—definitively whether or not they struck something else, like this stuff that we're talking about that was in your hands, did they hit anything else?

A. I don't know. I really—I really believe, if you want me to say what I think happened . . . I think when I fell my jaws popped together. That's what I think happened, upon reflection.

. . .

Q. You said, Ms. Goodnight, that you didn't hit the floor, your face and your jaw didn't hit the floor when you fell, did your teeth crunch together? Do you recall, testifying here today, when you fell, do you recall your teeth somehow crunching together when you fell, with the impact?

A. I don't remember that . . . I just, you know, know that I fell really hard

According to Claimant, she did not realize for some time that she had injured her teeth in the fall because they were not knocked out or severely injured in other respects. She felt no symptoms until they led her to see Wiedower. During the interim between the work-related fall and the onset of her dental pain, she had no falls and did not accidentally bite onto something hard such as a bone. While she has not been diagnosed as having bruxism² (grinding of teeth), she stated: "I'm not going to say that I don't ever grind my teeth, though, because I'm sure I probably do."

²The undersigned mispronounced the term during the hearing as "braxis."

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As she got up off the floor, she felt pain in her knees and back. She reported the incident to the school bookkeeper and was sent to Concentra Clinic.

Per her testimony, it was not until approximately one week prior to her October 21, 2019, appointment with her dentist, Dr. Wiedower, that she began experiencing dental symptoms. Based on this, she estimated that the onset of her tooth pain was October 15, 2019. She described the sensation: “I was just having lots of pain and stuff in here, and I felt like it might even be—I just—I thought I had an abscess because my teeth were hurting.” Claimant stated that this pain was coming from the right side of her jaw, with the bottom hurting more than the top. Eventually, she was diagnosed as having two fractured teeth. Her testimony was that the teeth do not hurt constantly. She has not yet had them fixed. After an injection by Wiedower did not help her condition, she was referred to Hixson. Claimant stated that she is seeking the treatment that has been recommended for her injured teeth.

On cross-examination, she acknowledged that both of the teeth in question have fillings that are 20 to 30 years old. The reason for the fillings was tooth decay. She agreed that when she presented to Concentra after the fall at issue, she made no complaint of her mouth, jaw or teeth being injured or painful. She stated that she would have mentioned it if she has sensed there being such a problem.

In contrast to her earlier testimony, when shown Wiedower’s October 21, 2019, report that is in evidence, she agreed that it accurately reflects that her dental symptoms began “out of nowhere” about three weeks—not one—prior to the

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appointment. The report makes no mention of a fall, accident, or being struck in the mouth/jaw.

Likewise, the Form AR-N in evidence does not reflect such an injury. Claimant agreed that in her statement to the adjuster, she represented that she did not hit her face or mouth in the July 30, 2019, fall.

Under further questioning by the Commission, Claimant testified that she did list her head as being hurt in the fall. But she added: “I don’t think I hit my head. I think it jarred my head and my head was hurting. I don’t really think I actually hit my head on the floor, but I don’t know that for sure.”

Claimant’s medical/dental records that are in evidence are as outlined above. Her reports from Concentra, where she initially sought treatment, make no mention of dental pain or of her mouth, jaw or teeth being struck or injured in the fall. When she saw Dr. Wiedower on October 21, 2019, she related that her upper right and lower right teeth began bothering her “out of nowhere” three weeks prior. Examination of tooth no. 3 showed a “large occl amalgam, fracture lines at D and ML,” while tooth no. 30 showed “large MOD amalgam w/ L tooth structure fractured off[.]” Dr. Hixson’s November 20, 2019, report reads in pertinent part: “Pt was referred to our office by Westport [D]ental in Conway in due to the fact that she had fallen on July 30, 2019, at work and broke some teeth. Pt has fractured her teeth on the right side #3 and #30.”

The evidence at bar shows that Claimant did not strike her face, mouth or jaw in the work-related fall. She does not recall whether the force of the impact caused her teeth to come together. Claimant did not report a dental injury after the fall. This is

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because she did not begin to experience tooth pain until the first week of October, which is over two months after the incident in question. I find Claimant to be very sincere in her belief that her fall at JA Fair High School caused her dental fractures. But any belief, no matter how sincere, is not a substitute for credible evidence. *Graham v. Jenkins Engineering*, 2004 AR Wrk. Comp. LEXIS 79, Claim No. F112391 (Full Commission Opinion filed March 12, 2004). In light of the foregoing, only through speculation and conjecture could I find that Claimant's work-related fall caused her tooth injuries. However, I cannot engage in speculation and conjecture. See *Dena Construction Co. v. Herndon*, 264 Ark. 791, 796, 575 S.W.2d 155 (1979). In sum, I am compelled to find that Claimant has not proven by a preponderance of the evidence that she sustained a compensable injury to her teeth.

B. Reasonable and Necessary Treatment

Introduction. As part of her claim for initial benefits, Claimant has alleged that she is entitled to treatment of her alleged dental injuries. Respondents, in turn, have denied responsibility for said treatment.

Standards. Under Ark. Code Ann. § 11-9-508(a) (Repl. 2012), an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove, by a preponderance of the evidence, that medical treatment is reasonable and

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necessary for the treatment of a compensable injury. *Brown, supra; Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001).

Discussion. Because Claimant has not proven that she suffered a compensable injury to her teeth, she cannot, and has not, proven by a preponderance of the evidence that she is entitled to reasonable and necessary treatment of such.

CONCLUSION

In accordance with the findings of fact and conclusions of law set forth above, this claim is hereby denied and dismissed.

IT IS SO ORDERED.

Hon. O. Milton Fine II
Chief Administrative Law Judge