

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC FILE No H104308

KEITH W. SMITH, EMPLOYEE

CLAIMANT

**ROCK DENTAL ARKANSAS, PLLC,
AXPM DENTAL MANAGEMENT, EMPLOYER**

RESPONDENT

**CINCINNATI CASUALTY Co./CINCINNATI
INSURANCE, CARRIER, CARRIER/TPA**

RESPONDENT

OPINION FILED 27 JULY 2023

On hearing before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe, 8 March 2023, Little Rock, Pulaski County, Arkansas.

Ms. Laura Beth York and Mr. B. Tanner Thomas, Attorneys-at-Law, Little Rock, Arkansas, appeared for the claimant.

Mr. Guy Alton Wade, Attorney-at-Law, Little Rock, Arkansas, appeared for the respondents.

I. STATEMENT OF THE CASE

The above-captioned case was heard on 8 March 2023 in Little Rock, Arkansas, after the parties participated in a prehearing telephone conference on 6 December 2022. A Prehearing Order was entered on that same day. The Order stated the following ISSUES TO BE LITIGATED:

1. Whether the claimant sustained a compensable injury to his back by specific incident.
2. Whether the claimant is entitled to reasonable and necessary medical treatment.
3. Whether the claimant is entitled to temporary total disability (TTD) benefits.
4. Whether the claimant is entitled to a controverted attorney's fee.

All other issues were reserved.

The parties' CONTENTIONS, as set forth in their prehearing questionnaire responses, were incorporated by reference into the Prehearing Order. The CLAIMANT CONTENDS:

1. That he suffered a compensable back injury in the scope and course of employment on 19 April 2021.
2. That he sought treatment on his own and underwent an MRI that revealed a superior end plate compression fracture at T-12, and corrective surgery occurred on 2 June 2021.
3. That he was taken off work for 19, 22, and 26 April and then 3, 6, 10, 13, 17, 20, and 25-38 May.
4. He is entitled to medical benefits, TTD, and that his attorney is entitled to a fee.

The RESPONDENTS CONTEND:

1. That the claimant did not sustain a compensable injury in the course and scope of his employment.

That Order also set forth the following STIPULATIONS:

1. The AWCC has jurisdiction over this claim.
2. An employee/employer/carrier relationship existed on 19 April 2021 and at all other times relevant to this claim.
3. The respondents have controverted this claim in its entirety.
4. The claimant's average weekly wage (AWW) entitles him to the maximum compensation rates.

Two (2) WITNESSES provided sworn testimony—the claimant spoke on his own behalf and the respondents called Mr. James “Jim” Cavanaugh, who appeared remotely.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record as a whole and having heard testimony from the witnesses, observing their demeanor, I make the following findings of fact and conclusions of law under Ark. Code Ann. § 11-9-704:

1. The AWCC has jurisdiction over this claim.
2. The previously noted stipulations are accepted as fact.
3. The claimant failed to prove, by a preponderance of evidence, that he suffered a work-related injury by specific incident.

4. Because he failed to prove a compensable injury, the claimant's request for reasonable and necessary medical treatment and TTD benefits are moot and will not be addressed below.
5. Consistent with the above, the claimant's attorney is not entitled to a fee.

III. HEARING TESTIMONY and MEDICAL EVIDENCE

A. Claimant on direct-examination by Mr. Thomas:

Claimant, Dr. Keith Smith, has been a dentist practicing his trade since completing dental school in 1984. He began working for respondent, Rock Dental, in their Helena office around October of 2020. A Little Rock resident, Dr. Smith would drive into town on Mondays and begin work around 8:00 AM, stay in local housing for the week, and then return home on Thursday afternoons or evenings. [TR at 8-11]

According to the claimant, he began most days by starting some tea in the office's breakroom. The claimant would go about other things while the tea brewed before going back into the breakroom to get his cup for the morning. On the morning of 19 April 2021, he was doing just that when he fell going back into the breakroom. [TR at 12-13] Dr. Smith claims that he stumbled over one of the chairs around the room's table. He was hurting but able to pull himself up into one of the chairs, where others found him after coming to the room to check on the commotion.

Dr. Smith explained that he was able to go back and continue a procedure he started before going to fetch his tea. Sometime afterwards a hygienist asked him to check some patients on the other side of the office. About that time, he said, the hygienist suggested that he sit down, saying he was "white as a sheet." [TR at 14]

Speaking again on the fall, the claimant said that he fell forward, twisting, and that he felt pain almost immediately. [TR at 17] After checking the hygiene patients, Dr. Smith said that the office manager indicated that he should be seen at the local hospital and called for EMS transport via Pafford Medical Services. The claimant stated his understanding that

his condition was ultimately determined to be “bruised up badly but nothing was fractured.” [TR at 18]

His next presentation for treatment was on 7 May 2021 at the chiropractic office of Dr. Chris Blackmon, where spinal x-rays were read to show compression fractures. [TR at 19] The claimant next saw Dr. Hal Hedges with Little Rock Family Practice (LRFP) on 14 May 2021. Dr. Hedges ordered an MRI that was performed on 20 May 2021. [TR at 21-22]

According to Dr. Smith, he received a call on 21 May saying he would not be needed at the office the following Monday, 24 May. He then received a call that Monday afternoon informing him that he had been relieved of his position with Rock Dental. [TR at 22]

Dr. Smith underwent a corrective procedure for his back issue at the beginning of June 2021 and did not work again until “the end of the month,” after “recuperating enough” to begin working again. [TR at 23] He stated that he began doing contract work for Aspen Dental Group in Hot Springs for about four (4) months before starting again with Jefferson Comprehensive Care for another year or so. At the time of the hearing, he said that he was working for Guided Practice Solutions Southern Dental Group. [TR at 24]

The claimant went on to say that he was taking Maxide to control his blood pressure and that he had not experienced any dizziness on the medication; but when asked if he had ever fallen due to dizziness on the medication, he answered, “No, not that I would say.” [TR at 24] When asked if he had any symptoms due to medication prior to his fall in April, he offered, “Not that I can speak to.” [TR at 25] He rated the pain he felt after falling as a nine (9) or ten (10) and said that he never experienced pain like that before. Dr. Smith believes that the corrective procedure was a success, though he experiences some reduction in range of motion, “which is part of being a dentist.” *Id.*

B. *Claimant on cross-examination by Mr. Wade:*

Respondents' counsel asked again about the morning of Dr. Smith's fall, and Dr. Smith said again that he fell on his way to get a cup of tea and that he had not been light-headed or dizzy at the time. Nor was there any hazard apparent on the floors. [TR at 28] He confirmed his discharge from the emergency department (ED) on the same day that he arrived and that he returned to work the following day, apparently without any further incident. [TR at 29] Dr. Smith eventually returned to Little Rock on Thursday, per usual. Other than some days off, he continued working in Helena until his release from employment with the respondent. *Id.*

Dr. Smith confirmed that he sought chiropractic care before falling, and that "[Dr.] Blackmon would do adjustments on you and kind of relieve some of that tenseness and soreness...." [TR at 30] Dr. Blackmon's treatments loosened tense areas and helped with the claimant's range of motion. [TR at 31] Dr. Smith also confirmed that he was taking no medication as a result of the fall and that he had no work restrictions. [TR at 31] Referring back to his deposition and being asked about his release from employment, the claimant affirmed that he was released because of a malpractice claim brought against him. [TR at 32]

The examination continued, referencing the EMS records from Pafford:

Q: It goes on to say that, "He states that just prior to falling he felt dizzy and light-headed." Did you tell them that?

A: I don't recall that.

Q: You don't know one way or the other?

A: No.

...

Q: ... at Helena Regional, do you remember describing the fact that you were dizzy or giddy at the time?

A: I couldn't say, Counselor.

Q: Okay. Page 16 of the medical exhibit says: “This 65-year-old white male dentist stood up, felt dizzy and lightheaded, and then fell to the floor.” Do you know where they would have gotten that history if not from you?

A: I’m not sure. [TR at 34-35]

The cross-examination concluded with Dr. Smith stating that he did not return to Dr. Hedges or anyone else at the family medicine clinic after the outpatient procedure was performed. *Id.*

C. Claimant on re-direct and re-cross:

Dr. Smith attributed the report of his “giddy” behavior after falling to experiencing a “range of emotions and behaviors because I was hurting.” [TR at 36.] His testimony concluded shortly afterwards, and he rested his case.

D. Respondent Mr. James “Jim” Cavanaugh, claims adjuster for carrier-respondent:

Mr. Cavanaugh explained that Dr. Smith’s claim was assigned for his review and investigation. [TR at 40] He spoke with the claimant on 11 May 2021 and his notes¹ reflect a conversation where Dr. Smith relayed going to the breakroom and fainting or losing consciousness. [TR at 43] When asked again about the reported cause of the fall, Mr. Cavanaugh stated, “You know, in my note I asked him, you know, why did he fall. And you know, I summarized the he admitted he was standing in the breakroom and fainting... it might have likely been related to his blood pressure.” [TR at 45]

Mr. Cavanaugh said that calls with claimants are sometimes recorded, but the call with Dr. Smith was not and that he took notes instead. He did not recall any medical records being available or made part of the claim file at the time of the call. [TR at 48]

E. Claimant on rebuttal:

¹ Mr. Cavanaugh testified from his memory and refreshed his recollection with contemporaneous notes from the conversation with Dr. Smith. As he relied on the notes at times, a copy was provided to Dr. Smith’s counsel for is review. [TR at 44-45]

Dr. Smith testified briefly again after Mr. Cavanaugh's testimony. He recalled Mr. Cavanaugh as rude and reiterated that he did not recall reporting any dizziness or blood pressure problems related to his fall. [TR at 52] But when asked again about the medical reports of feeling lightheaded, dizzy, and giddy and whether the medical providers would "have gotten this information from anybody but you," he responded that they would not. [TR at 54]

Upon brief examination from the bench, the claimant stated that he was familiar with HIPAA, that he had a chance to review his medical records, and that he had not attempted to exercise his right under HIPAA to correct or amend the medical records that he took issue with earlier in his testimony. [TR at 55] He followed that by saying that he passed his medical records on to his counsel without reviewing them. [TR at 56]

F. Medical Records:

The records from Pafford show that a call was made at 10:20 AM and that the ambulance arrived eight (8) minutes later. *See, Cl. Ex. № 1 at 1.* The narrative portion of the record states that "just prior to falling he felt dizzy and lightheaded. The [patient's vital signs] are stable other than his heart rate, which is noted to be bradycardic." *See, Cl. Ex. № 1 at 3.* In addition to the basic cardiac monitor, a 12-lead ECG was placed during transport, "reading much clearer and showing sinus brady as well." *Id.*

His ED records show that he presented at 11:14 AM with back pain that began about an hour prior to admission. He rated the pain at eight (8) out of ten (10). *See Cl. Ex. № 1 at 20.* The nurse's notes show that he "felt dizzy and fell backwards hurting his back." *See, Cl. Ex. № 1 at 20.* The physician's notes show that the claimant "stood up [and] felt dizzy and lightheaded, then fell to the floor." *See, Cl. Ex. № 1 at 16.* "Slight low back pain" was described by the claimant, but on exam he exhibited "No spinal tenderness. No costovertebral

tenderness. Full range of motion.” *Id.* Ketorolac and then Norco were administered for pain. *See, Cl. Ex. No 1 at 21.* Imaging was ordered and revealed no significant findings. *See, Cl. Ex. No 1 at 22-23.*

His discharge summary shows Dr. Smith’s diagnosis as “dizziness and giddiness; sprain of ligaments of lumbar spine” and that he was provided discharge instructions for dizziness and lumbar strain. *See, Cl. Ex. No 1 at 5.* The physician prescribed Naprosyn and Norco for pain control. *Id.* Dr. Smith’s signature appears on the 19 April 2021 discharge form. *Id.*

The claimant’s first encounter note with Dr. Blackmon is dated 7 May 2021, and it reflects:

Keith sought treatment today, complaining of intermittent sharp and throbbing discomfort of the low back. He describes that the discomfort increases with movement. On a scale of 1 to 10, with 10 being the most severe, he, using a VAS, describes the intensity as a 7 and indicated that the discomfort occurs approximately 60% of the time. He states the discomfort is the same since his last visit. *See, Cl. Ex. No 1 at 24*

The note reflects a diagnosis of “wedge compression fracture of T11-T12 vertebra,” but a separate x-ray imaging report is not included; nor are a “scanned consultation” or “scanned examination” that are mentioned in the note. *Id.* The claimant was directed to consult with family practice medicine for the spine condition.

Dr. Smith presented to Dr. Hal Hedges at LRFP on 14 May 2021. *See, Cl. Ex. No 1 at 25.* The clinic note shows that Dr. Smith presented to establish care and that he was seeking pain control options with a recent fall and compression fracture diagnosis. Dr. Hedges reviewed the x-rays and noted, “While there is some wedge deformity of T11, I think there is a superior endplate compression fracture of T12, instead.” *Id.* He ordered an MRI and planned to arrange vertebroplasty if the MRI confirmed the compression fracture. *See, Cl. Ex. No 1 at 26.*

The MRI report is dated 20 May 2021 and, indeed, shows a superior endplate compression fracture at T12. *See, Cl. Ex. № 1 at 27-28.* Advanced facet arthropathy at L4-5 and L5-S1 was also found.

The notes from CHI St. Vincent show that he presented on 1 June 2021 for a radiology procedure to address “intractable back pain secondary to osteoporotic compression fracture.” *See, Cl. Ex. № 1 at 29-30.* The report indicated that the pain was “unresponsive to conservative management,” that a back brace was not used, and that the pain “continued despite therapy.” *See Cl. Ex. № 1 at 32.* The discharge plan called for decreased activity for the day, with “progressive activity to normal level tomorrow.” *See, Cl. Ex. № 1 at 31.* No medications were prescribed at discharge.

The claimant returned to Dr. Blackmon’s office on 10 June 2021, with complaints of “intermittent tightness, diffuse and tingling discomfort in the low back,” describing the pain as five (5) out of ten (10) and occurring fifty percent (50%) of the time. *See, Cl. Ex. № 1 at 34.* He stated that his discomfort was better than his last visit, but that his “low back and neck and shoulders are still very sore and he is leaving for Florida in the morning.” *Id.* Dr. Blackmon found:

Hypertonicity in the following areas: left cervical dorsal area, left upper thoracic area and lumbosacral region. Multiple subluxations with spasm, hypomobility and end point tenderness were found at the following levels: C5, C7, T1, T2, T5, T7, L4, L5, sacrum, right pelvis and left pelvis. An extremity subluxation was discovered and adjusted in the left shoulder and right knee.

He assessed, “Keith has had an exacerbation. These are episodic marked deterioration[s] of the patient’s condition due to acute flareups of the presenting conditions.” The plan called for daily treatment for three (3) to five (5) days, then three (3) times per week for three (3) to four (4) weeks, then twice per week for three (3) to four (4) weeks, then once per week for three (3) weeks, and then once every two (2) weeks. *Id.*

The next record from Dr. Blackmon is a letter dated 8 February 2023 that explained he saw Dr. Smith one additional time in June of 2021, but had not seen him again until November of 2022. *See, Cl. Ex. No 1 at 335*

IV. ADJUDICATION

The stipulated facts, as agreed during the prehearing conference, are outlined above.

It is settled that the Commission, with the benefit of being in the presence of the witness and observing his or her demeanor, determines a witness' credibility and the appropriate weight to accord their statements. *See Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 448, 990 S.W.2d 522 (1999).

Under Arkansas' workers' compensation laws, a worker has the burden of proving, by a preponderance of the evidence, that he sustained a compensable injury as the result of a workplace incident. Ark. Code Ann. § 11-9-102(4)(E)(i). A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). Objective medical findings are those findings that cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i). Causation does not need to be established by objective findings when the objective medical evidence establishes that an injury exists and other nonmedical evidence shows that it is more likely than not that the injury was caused by an incident in the workplace. *Bean v. Reynolds Consumer Prods.*, 2022 Ark. App 276, 646 S.W.3d 655, 2022 Ark. App. LEXIS 276, citing *Wal-Mart Stores, Inc. v. VanWagner, supra*.

Here, the claimant alleges that his back injury occurred by specific incident. The claimant must establish four (4) factors by a preponderance of the evidence to prove a specific incident injury: (1) that the injury arose during the course of employment; (2) that the injury caused an actual harm that required medical attention; (3) that objective findings support the medical evidence; and (4) that the injury was caused by a particular incident, identifiable

in time and place. See *Cossey v. G. A. Thomas Racing Stable*, 2009 Ark. App. 666,5, 344 S.W.3d 684, 689.

The respondents denied Dr. Smith's specific incident back injury claim, arguing that it occurred outside the course and scope and/or that it was idiopathic in nature. [TR at 5]

An idiopathic injury is "one that is personal in nature or peculiar to the individual; therefore, it is not work-related." *Bean, supra*, citing *Little Rock Convention & Visitors Bureau v. Pack*, 60 Ark. App. 82, 959 S.W.2d 415 (1997).

A. Claimant failed to prove, by a preponderance of the evidence, that he suffered a compensable injury.

Based on the evidence before me, I do not find it more likely than not that the claimant suffered a compensable back injury.

First, I did not find the claimant's testimony to be credible and, accordingly, give it little weight. There is no dispute that the claimant fell at work on a Monday morning. The exact circumstances around that fall are unclear, and the claimant brings his credibility into question largely in that regard. He stated that he tripped over a chair, but he refused to accept as accurate several contemporaneous statements credited to him regarding his fall. In his reports to the EMS service, the ED nurse, and the attending physician, the medical records all reflect feelings of dizziness and/or lightheadedness immediately prior to his fall. He stated that he had no recollection of such reports, but acknowledged that he was the only person who would have offered the information. When asked on cross-examination if he remembered describing feeling dizzy or giddy to the ED staff, he evasively responded, "I couldn't say, Counselor."

The fall happened around 8:30 AM, and the ambulance report shows the crew encountering the patient two (2) hours later. The 11:14 AM nurse's note indicates that he reported feeling dizzy and falling backwards. About ten (10) minutes later, the physician's

note records that he felt dizzy and lightheaded and fell to the floor. At one point he appears to attribute anything said or done after falling to his being in pain. At another he said he was sort of in shock and doesn't really remember the details after falling. He reported no sort of head injury and showed no signs of distress or cognitive impairment at any point in his treatment.

Given the timeline between the fall and the multiple reports to medical providers that he felt dizzy and lightheaded before falling, that he made no reports of and displayed no signs of cognitive impairment, and that he performed dentistry, apparently without issue, on at least one patient to whom he had administered anesthesia prior to falling, I cannot credit his statements that he had no recollection of reporting feeling dizzy or lightheaded prior to falling. Similarly, I struggle to accept his position that he was unaware that his medical records reflected assessments of dizziness, when the same appears on the discharge instructions that bear his signature. Moreover, the contemporaneous notes from the insurance adjuster (whose testimony I found credible) reflect that Dr. Smith fainted or lost consciousness and made no mention of tripping over a chair. Given the answers he offered and his demeanor around this line of testimony, I find his testimony to lack credibility.²

Affording little evidentiary value to the claimant's version of the facts, I turn to the available medical evidence. The law requires that I weigh medical evidence as I must weigh any other evidence. See *Beliew v. Lennox Indus.*, 2010 Ark. App. 112, 2010 Ark. App. LEXIS 95. Where evidence may be conflicting, I am to attempt to reconcile the same and determine the true facts. *Id.*, citing *Hargis Transp. V. Chesser*, 87 Ark. App. 301, 190 S.W.3d 309 (2004).

² Additionally, while it is not in my view directly related to whether he sustained a compensable injury, it does speak to his credibility that Dr. Smith likened his beginning work again at the end of June as "having recuperated enough where I could begin to work." This weeks' long convalescence does not ring consistent with the discharge summary from his outpatient procedure that called for a return to normal activity the following day. It does, I find, call further into question his candor in testifying before the Commission.

The following facts are uncontested: the claimant fell while at work in April, he was diagnosed with a compression fracture in May, and he underwent an outpatient procedure to address the compression fracture in June. On the one hand, the contemporaneous medical records from HRMC show no significant findings of acute injury. On the other hand, the claimant presented to Dr. Blackmon several weeks after falling and imaging revealed a compression fracture of his thoracic vertebra. That 7 May 2021 record makes no mention of a fall or any other attempt towards discussing or identifying a mechanism of injury. Indeed, the note makes clear that “the discomfort is the same since his last visit,” and Dr. Smith agreed on the stand that he sought chiropractic care prior to his fall. In fact, despite Dr. Smith feeling that the procedure for his compression fracture was a success, he still went on afterwards to seek more chiropractic care from Dr. Blackmon, who charted an extensive list of objective findings and a months’ long treatment plan for the same.

I do not find objective evidence to support a finding that Dr. Smith suffered a compensable back injury when he fell at work. The procedure notes appear to reflect a more chronic condition and pain presentation. “Intractable pain related to osteoporotic compression fracture, unresponsive to conservative management... Pain has not been relieved by conservative measures... Pain has continued despite therapy.” Relevant records prior to Dr. Smith’s fall are not available for comparison. But even in the absence of those, I find that it is more likely than not that the compression fracture found in May and treated in June of 2021 was idiopathic and not caused by his falling in April.

B. Benefits

Because he failed to prove a compensable injury, the claimant’s request for reasonable and necessary medical treatment and TTD benefits are moot.

C. Attorney’s Fee

In accordance with the above, the claimant is not entitled to an attorney’s fee.

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V. ORDER

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

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE