

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC FILE No H204285

NORMAN R. SWOPE, EMPLOYEE

CLAIMANT

BAPTIST HEALTH SYSTEM, EMPLOYER

RESPONDENT

BAPTIST HEALTH, CARRIER/TPA

RESPONDENT

OPINION FILED 25 JANUARY 2024

Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 1 November 2023 in Little Rock, Pulaski County, Arkansas.

The claimant appeared *pro se*.

Mr. Jarrod S. Parrish, of Worley, Wood & Parish, PA, Attorneys-at-Law of Little Rock, appeared for the respondents.

I. STATEMENT OF THE CASE

The above-captioned case was heard on 1 November 2023 in Little Rock, Arkansas, after the parties participated in a prehearing telephone conference on 5 September 2023. The subsequent Prehearing Order, admitted to the record without objection as Commission's Exhibit No 1, was entered on the day after the conference. The Order stated the following ISSUES TO BE LITIGATED:

1. Whether the claimant suffered a compensable injury to his right ankle and left knee.
2. Whether the respondents received notice of a claimed injury prior to 4 May 2022.

The parties' CONTENTIONS, as set forth in their prehearing questionnaire responses, were incorporated into the Prehearing Order. The claimant contends:

1. That a second injury was not assessed by a doctor, and his claim was denied by the carrier multiple times.

The respondents contend:

1. That the claimant did not sustain compensable injuries to his right ankle or left knee on or about 31 March 2022.
2. That the medical documentation does not support objective findings or the need for treatment associated with an incident on the alleged date of injury.
3. That medical documentation does not support off-work status as a result of any incident.
4. That they did not receive notice of a claimed injury until 4 May 2022 and that if compensability is found, then they should not be liable for benefits prior to receipt of actual notice of a claimed injury.

That Order also set forth the following STIPULATIONS:

1. The AWCC has jurisdiction over this claim.
2. An employee/employer/carrier relationship existed on 31 March 2022, and the claimant was entitled to the maximum compensation rates at that time¹.
3. The respondents have controverted this claim in its entirety.

The following WITNESSES testified at the hearing: the claimant testified on his own behalf, and Ms. Isobel Louise Balch testified on behalf of the respondents.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record as a whole and having heard testimony from the witnesses and observing their demeanor, I make the following findings of fact and conclusions of law under Arkansas Code Annotated § 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 compensable injury.
4. His claims for benefits are denied accordingly.

¹ The Prehearing Order stated that the parties would be required to stipulate to the applicable compensation rate. Prior to the beginning of the hearing, and then again once on the record, the parties agreed that the claimant's earnings entitled him to the maximum compensation rate. See TR at 6.

III. HEARING TESTIMONY

Claimant Norman Swope

The claimant testified that he was working as a nurse manager at the respondents' hospital in Little Rock at the time he claims his workplace injury occurred. [TR at 12.] He was assigned to the Oncology Unit, 10A, where his duties included ensuring appropriate staffing, medical equipment maintenance, and other general requirements for patient safety.

On the morning relevant to his claim, 31 March 2022, a crash code alerted about 6:45 AM. Staff initiated their code procedures and found that they did not have the correct supplies at hand. Mr. Swope ran towards another unit to retrieve what was needed. He said, "When I turned the first corner, my ankle collapsed, which caused me to slam my other leg down, which in turn popped, lost my balance, hobbled to that unit, obtained the equipment we needed, returned, passed it off, and went and sat in my office." [TR at 13.] The claimant testified that he reported the injury to his supervisor that morning.

Mr. Swope said that he later felt his ability to do recovery exercises for an ankle injury not related to this claim was limited by his knee trouble. [TR at 15.] So, he began seeking attention for his knee around the time he became aware of those limitations.

The claimant stated that there were no witnesses to his fall and concluded his direct testimony. He offered no documentary evidence in support of his claim.

On cross-examination the claimant confirmed that he experienced a previous work-related injury to his ankle and that he was familiar with the process for lodging a workers' compensation claim. [TR at 16.] He agreed that he did not request treatment from Baptist related to this claim until after he stumbled in his driveway picking up debris after a 31 March 2023 tornado hit Little Rock. [TR at 20.] The claimant went on to confirm that during his deposition he testified that "the only reason we're sitting here is because I need to be covered by light-duty to have my knee worked on or I'll be off until I'm released." [TR at 21.]

The testimony reflected the claimant's understanding or belief that a light-duty assignment would only be available if treatment for his knee was related to a workplace injury. [TR at 21-22.]

The claimant testified further, in a general response to the questioning from respondents' counsel, that everyone at work knew he had a knee injury and (acknowledging his ankle injury that is separate from this claim) that he did not want to try treating both legs at the same time. [TR at 24.] He acknowledged again that he did not have medical evidence to support his claim and "the exacerbation from a tornado and they're going to use that as an excuse." *Id.* When asked if he wished to draw attention to any of the medical evidence offered into the record as supportive of his claim, he responded, "No, Your Honor." [TR at 25.]

Isobel Louise Balch

Ms. Balch testified that she is an administrator and case manager for the respondents' Employee Health Division. [TR at 26.] She stated that she worked with the claimant on an earlier workplace injury claim and that she assisted with or coordinated doctor visits, provider notes, work restrictions, and the like. According to Ms. Balch, she first learned of the alleged workplace injury related to this claim via physician notes she received in the course of managing his other claim. [TR at 28.] She received visit notes in May of 2022 from an appointment a month earlier. She then asked Mr. Swope via email if he was claiming that his injury or reinjury happened at work. He responded in the affirmative and then completed an injury report at her request.

She testified that Mr. Swope did not claim to have made an earlier report of an incident or injury because he did not need treatment for his knee and his ankle was already being treated. [TR at 29.] Ms. Balch testified that she did not receive a request for treatment or any other request for benefits on this claim until about a year later, after she was made aware

of his stumbling outside of his home cleaning up after the tornado. [TR at 30.] Her testimony concluded without any questions from the claimant.

Summations

Mr. Swope concluded the hearing by saying that he tried to be “up front” with his employer, that his supervisor was aware of his attempt to make a timely report of an injury, and that although she was not there to offer evidence in support of his claim, his supervisor had been his “biggest advocate.” [TR at 31.] He also said that he did the therapy and rehabilitation work necessary for his previous ankle injury and that he has “done everything they’ve asked and I don’t really want anything from them. I just want my protections in place....” [TR at 32.] He went on, “It doesn’t matter if I’m hurt, if I’ve got a job to do, I’ve got a job to do. I don’t want their money. I don’t want them dictating how I get my care or treatment, but it happened at work. I told my boss. She’s been aware of it the entire time. Again, unfortunately she’s not here, and as far as testimony from our representative from my hospital, she’s entitled to her opinion, as am I. That’s all I have to say.” [TR at 33.]

Counsel for the respondents began his summation by noting that the claimant’s ankle injury was listed in the prehearing questionnaire as a potential issue if the claimant was arguing a new injury tied to the alleged knee injury. As he did not testify in that regard, he stated that the issue could be disregarded. On the claim of a compensable knee injury, counsel argued that no objective medical evidence was presented to support such a finding. He also argued that the lapse of time between the alleged injury and the seeking of treatment, along with the yard or driveway stumbling incident, cut against a finding of a compensable injury. [TR at 34.]

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*.

The claimant alleges that his injury occurred by a 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.

Based on the evidence presented, I find that Mr. Swope fails to meet his burden for establishing a compensable injury. Even accepting as true that he fell during the 31 March 2022 incident, he has not provided sufficient evidence to support his claim with regard to the

other required elements. To put it plainly, he offered no evidence to link a fall to an actual injury sustained in the workplace.

As noted in the testimony above, Mr. Swope provided no documentary evidence or witness testimony in support of his claim. He conceded that the respondents' witness was "entitled to her opinion" on this matter as to her relaying what he reported and when. He did not actually dispute her narrative nor did he cross-examine her as to why the claim was denied. He relied, instead, on his insisting that his supervisor was aware of a fall and injury and if she had been present to testify, she would have supported his cause. That is simply not enough to meet his burden of proving that it is more likely than not that he suffered any compensable injury in this claim.

VI. 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