

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G901239

LINDA TORRES, EMPLOYEE	CLAIMANT
HARRY G. BARR CO., EMPLOYER	RESPONDENT NO. 1
ACCIDENT FUND INSURANCE CARRIER/TPA	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED MAY 18, 2021

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE EDDIE H. WALKER, JR., Attorney at Law, Fort Smith, Arkansas.

Respondents No. 1 represented by the HONORABLE JAMES A. ARNOLD II, Attorney at Law, Fort Smith, Arkansas.

Respondent No. 2 represented by the HONORABLE CHRISTY L. KING, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed December 18, 2020. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on April 8, 2020 and

contained in a Pre-hearing Order filed that same date, are hereby accepted as fact.

2. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable specific incident injury to her lower back on January 28, 2019.
3. The claimant has failed to prove by a preponderance of the evidence that she is entitled to medical treatment.
4. The claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits.
5. The claimant has failed to prove that her attorney is entitled to an attorney's fee in this matter.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Therefore, we affirm and adopt the December 18, 2020 decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

CHRISTOPHER L. PALMER, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

After my *de novo* review of the record in this claim, I dissent from the majority opinion, finding that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable specific incident injury to her lower back on January 28, 2019; that the claimant has failed to prove by a preponderance of the evidence that she is entitled to medical treatment; that the claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits; and that the claimant has failed to prove that her attorney is entitled to an attorney's fee in this matter.

Factual and Medical Background

The claimant, now 66 years old, worked for the respondent-employer as a certified clinical human dialysis technician. The claimant

testified that on January 28, 2019, she sustained an injury to her low back.

The claimant explained that the work accident occurred as follows:

Q Ms. Torres, did anything unusual happen to you while at work at Harry G. Barr on January 28, 2019?

A Yes.

Q What?

A My leg started hurting.

Q And what were you doing at the time that your leg started hurting?

A I was cutting on my saw and going to the other side to get metal out for my material. And then I would have to walk back and put it on my saw, cut on my saw, take the metal out, turn around, put it in my cart around the back of me, and I did that all day.

Q So were you standing or sitting when you were working on this saw?

A I stand.

Q And could you stand straight up and operate the saw or did you have to bend to operate the saw or what?

A We had to bend. I had to bend to operate the saw.

The claimant testified that she had experienced back problems prior to the work accident but on the day before the accident, her

back felt fine. According to the claimant, she reported to work at 6:00 a.m. without pain but by 9:00 a.m. her leg had started hurting.

The next day, the claimant saw Laura Pace, a Nurse Practitioner at her primary care physician's office. The claimant complained of "lower back pain that radiates down LLE". The claimant underwent lumbar spine x-rays which revealed "grade 1 anterolisthesis L4-5 new versus prior". The claimant was diagnosed with acute exacerbation of chronic low back pain. The claimant was given Kenalog and Toradol injections and instructed to rest, use ice, and wear a back brace while lifting.

In a letter written by Nurse Pace requesting accommodations for the claimant, she noted the following:

After assessing the patient and taking a thorough history, it seems that patient is suffering an injury likely work-related.

On February 11, 2019, the claimant began treating with Dr. Keith Holder. Dr. Holder diagnosed the claimant with "[s]train of muscle, fascia and tendon of lower back". Regarding medical causation, Dr. Holder noted, "[t]he cause of this problem appears to be, in part, related to work activities". The claimant was placed on restricted work duty, which limited lifting to 20 pounds or less and limited bending, stooping, and twisting. The

claimant was also instructed to alternate sitting, standing, and walking as tolerated.

The claimant underwent a lumbar spine MRI on February 24, 2020. The MRI revealed the following:

FINDINGS:

Moderate disc space narrowing noted at L4-5 level with anterior listhesis of L4 on L5 measuring probably 4 mm. No compression fractures or signal abnormalities in the vertebral bodies. Soft tissues are grossly normal signal characteristics.

L1-2: There is a broad-based left paracentral focal disc protrusion with mass effect on the thecal sac and left lateral recess. AP diameter of the thecal sac is probably 9 mm. Mild degenerative facet changes. Foramina patent.

L2-3: Degenerative facet changes otherwise remarkable.

L3-4: There is a broad-based left lateral protrusion present. With no significant foraminal narrowing although this may contact the left L3 nerve root outside the foramen. Hypertrophy of facets and ligamentum flavum noted. Mild relative central canal narrowing present.

L4-5: Prominent hypertrophy of facets and ligamentum flavum with moderate to severe central stenosis with prominent bilateral lateral recess narrowing. There is grade 1 spondylolisthesis present. Likely mass effect on the L5 nerve roots in the lateral recesses. There is disc extending into the left foramen. Correlate

as to contact of the left L4 nerve root. Left foraminal narrowing present.

L5-S1: Focal broad-based central/left paracentral protrusion present which likely contacts left S1 nerve root left lateral recess. Probably no significant central stenosis. Foramina are patent.

IMPRESSION:

1. Grade 1 spondylolisthesis L4-5 level with prominent hypertrophy of facets and ligamentum flavum with moderate to severe central stenosis and prominent lateral recess narrowing which probably impinges on the L5 nerve at bilaterally. Also disc extending left foramen which may contact the left L4 nerve root as above.
2. Left lateral broadbase protrusion L3-4 level which may contact the L3 nerve root outside the foramen. Correlate clinically. Mild central stenosis related to hypertrophy the facets and ligamentum flavum this level.
3. Broad-based central/left paracentral protrusion L5-S1 level which may contact the left S1 nerve root left lateral recess without central stenosis.
4. Broad-based left paracentral protrusion L1-2 level mass effect on the left side of the thecal sac mild central stenosis.

The claimant was referred to Dr. Arthur Johnson, a neurosurgeon, who she first saw on March 11, 2020. Dr. Johnson discussed treatment options with the claimant, including physical therapy, rest, medication, chiropractic therapy and surgery. The claimant elected to proceed with surgery.

Opinion

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. §11-9-102(4)(A)(i) (Repl. 2012), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(4)(D), establishing the injury; and (4) proof by a preponderance of the evidence that 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).

The claimant's low back injury meets the requirements for compensability. The claimant was injured in a specific incident while performing employment services on January 28, 2019. The claimant testified that she sustained a low back injury as a result of bending for an extended period of time while operating a saw. The claimant began experiencing symptoms approximately three hours into her shift and sought treatment for her back pain the next day.

There were objective findings of the injury in the form of protrusions at the L1-2, L3-4, and L5-S1 levels and grade 1

spondylolisthesis at the L4-5 level as shown on an MRI taken on February 24, 2020. In addition, this injury required medical treatment in the form of prescription medications, Kenalog and Toradol injections, and physical therapy.

The majority, in affirming and adopting the opinion of the Administrative Law Judge, concluded that there was not any specific incident that caused a compensable injury to the claimant's low back. However, I disagree with this finding. This case is analogous to *Pearson v. Worksource*, 2012 Ark. 406, 424 S.W.3d 311 (2012). In *Pearson*, the appellant developed a blister on his great left toe which he alleged was caused by walking in ill-fitting boots that his employer supplied. The ALJ in *Pearson* found that he sustained a compensable injury. The Commission reversed that decision, finding that because Pearson's blister may have gradually worsened over the course of the work day, it was not a specific-incident injury. The Arkansas Supreme Court reversed the Commission's opinion, holding Pearson suffered a compensable specific incident injury. In reaching this conclusion, the *Pearson* court explained, "there is an obvious, direct correlation in the instant case between the injury Pearson claimed he suffered at work (the blister) and the specific incident that he maintains caused the injury (repeatedly walking across the field while wearing ill-fitting work-supplied boots)".

Here, as in *Pearson*, there is an obvious, direct correlation between the claimant's low back injury and the specific incident of bending for extended periods of time while operating a saw. Therefore, I find that the act of bending while operating a saw constituted a specific incident in this claim.

Based on the foregoing, I find that the claimant has established by a preponderance of the evidence that she sustained a compensable lumbar spine injury.

For the foregoing reason, I dissent from the majority opinion.

M. Scott Willhite, Commissioner