

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G703705

DELORISE WALLS, EMPLOYEE

CLAIMANT

**PRIDE INDUSTRIES, INC.,
EMPLOYER**

RESPONDENT

**NORTH RIVER INS. CO.,
CARRIER**

RESPONDENT

OPINION FILED JANUARY 28, 2021

Hearing before Administrative Law Judge O. Milton Fine II on November 5, 2020, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Andy Caldwell, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. Jason M. Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On November 5, 2020, the above-captioned claim was heard in Little Rock, Arkansas. A prehearing conference took place on June 1, 2020. A prehearing order entered on that date 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. With an amendment of the fourth, they are the following, which I accept:

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

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2. The employee/employer relationship existed on April 1, 2016, and at all other relevant times.
3. Respondents initially accepted this claim insofar as it pertained to Claimant's left hip and leg. But they are now controverting the claim in its entirety.
4. Claimant's average weekly wage of \$530.00 entitles her to compensation rates of \$354.00/\$267.00.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1. After the amendment of Issue No. 3 and the reservation of Issue Nos. 3 and 5, concerning Claimant's alleged entitlement to temporary total disability benefits and a controverted attorney's fee, the following were litigated:

1. Whether the statute of limitations bars the back injury portion of this claim.
2. Whether Claimant sustained a compensable injury to her left leg, left hip, and back by specific incident.
3. When did Claimant furnish notice of the back injury portion of this claim?
4. Whether Claimant is entitled to reasonable and necessary medical treatment.

All other issues have been reserved.

Contentions

The respective contentions of the parties, following amendments, read as follows:

Claimant:

1. Claimant contends that she sustained a compensable injury to her back, left hip and left leg on April 1, 2016 in the course and scope of her employment with the respondent employer. Respondents initially accepted the left hip and left leg claim as compensable and paid certain benefits. They have controverted Claimant's entitlement to additional benefits, and they have controverted the back injury entirely. Respondents have never asserted a statute of limitations defense as it pertains to the back injury. Claimant initially complained of left hip and leg pain and received treatment pertained thereto. On January 2, 2019, her physician indicated that her pain was coming from her back and she has had treatment for her back since that time. This was a latent injury; and therefore, the statute of limitations does not bar her back claim. Respondents did not display the statutorily required notice, either. Thus, they should be estopped from asserting the statute of limitations defense.
2. Claimant also contends that she is entitled to reasonable and necessary medical treatment (including prescription and mileage reimbursement). All other issues are reserved.

Respondents:

1. Respondents contend that the claimant did not sustain a compensable injury to her hip or back. There are no objective medical findings in the record of an acute injury. She suffers from pre-existing and degenerative

problems that are not related to her employment. The claimant did not report a back injury. The applicable statute of limitations bars all or part of this claim. Claimant was released to full duty and returned to work.

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 witnesses and to observe their 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.
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 left hip, to her left leg, or to her back.
4. Because of the above findings concerning compensability, the remaining issues—whether the statute of limitations has run on Claimant's claim for an alleged back injury, when notice was furnished of her alleged back injury, and whether she is entitled to reasonable and necessary medical treatment of her alleged injuries—are moot and will not be addressed.

ADJUDICATION

Summary of Evidence

The hearing witnesses were Claimant, Ruth James and Jerry George.

Along with the prehearing order discussed above, the other exhibits admitted into evidence in this case were Claimant's Exhibit 1, a compilation of her medical records, consisting of four abstract/index pages and 250 numbered pages thereafter; Claimant's Exhibit 2, non-medical records, consisting of one index page and 106 numbered pages thereafter; and Respondents' Exhibit 1, non-medical records, consisting of one index page and five numbered pages thereafter.

In addition, I have blue-backed to the record Respondents' November 16, 2020 post-hearing brief, consisting of five numbered pages.

Adjudication

A. Compensability

Introduction. Claimant has argued that on or around April 1, 2016, she sustained compensable injuries to her left hip, left leg, and back as a result of a specific incident at work. Respondents dispute that she suffered a compensable injury.

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

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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. Claimant’s hearing testimony was that on April 1, 2016, she was employed by Respondent Pride Industries as the lead janitor. At around 9:00 to 9:15 a.m. that day, she and co-workers were returning from their “lunch break” in the basement and were waiting for an elevator when another co-worker struck her with a rolling trash bin in the back side of her left hip. Claimant stated that she reported the injury to her supervisor, Jerry George. An incident report was prepared. She related: “I told [him that] he was going to have to take me to the doctor because I was hurting bad, yes.” Notwithstanding this, the medical records in evidence reflect that she did not go to

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Concentra Medical Clinic until three days later, on April 4, 2016. When she did so, Claimant reported that she was hit by a cart at work “several days ago,” and that her hip pain began on noon on April 4.

Dr. Scott Carle, the examining physician, examined her and wrote the following in his report:

Left Hip:

Appearance: Normal.

Tenderness: None except the greater trochanter and bursa.

Palpation: no palpable clunk, no crepitus, no proximal hamstring defect, no proximal quadriceps defect and no warmth.

Neuro/Vascular: neurovascular function intact.

Skin: Normal at site of complaint of symptoms.

Neurologic: cranial nerves grossly intact.

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Radiology Results

Degenerative changes/no acute fracture seen.

Despite the fact that the physical examination of the hip revealed no objective findings of an acute nature, Dr. Carle assessed Claimant as having the following:

1. Contusion of hip, left (924.01) (870.02XA)
2. Trochanteric bursitis (726.5) (M70.60)

However, I cannot credit these. Per DORLAND’S ILLUSTRATED MEDICAL DICTIONARY 414 (30th ed. 2003) (hereinafter “DORLAND’S”), “contusion” is defined as “an injury of a part without a break in the skin and with a subcutaneous hemorrhage. Called also *bruise*.” As the Arkansas Court of Appeals pointed out in *Ellis v. J.D. & Billy Hines Trucking, Inc.*, 104 Ark. App. 118, 289 S.W.3d 497 (2008), “[o]ur cases, moreover, use the words “contusion” and “bruise” interchangeably.” But as cited above, Dr. Carle did not observe any bruise or mark; the appearance of the hip was “[n]ormal.” This is confirmed by what

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Scott Seybold, PT, wrote when he again examined her left hip the next day, on April 5, 2016: “No significant findings were noted on palpation and observation.” Jerry Daniel, PT, repeated this finding the next day, April 6, 2016. That same day, she was released at maximum medical improvement with no restrictions. In *Ellis, supra*, the Arkansas Court of Appeals held that a contusion diagnosis is an objective finding unless other evidence indicates that it not objective. See also *TJX Cos. v. Lopez*, 2019 Ark. App. 233, 574 S.W.3d 230. I find that the foregoing evidence establishes that Carle’s contusion diagnosis is not an objective finding.

In turn, DORLAND’S defines “bursitis” as “inflammation of a bursa” *Id.* at 265. But again, nothing in the records indicates that objective, measurable medical findings formed the basis for this assessment.

After Claimant’s release from treatment on April 6, 2016, she did not seek treatment again for any alleged injury arising out of the alleged April 1, 2016 incident until 14 months later, on June 7, 2017. On this occasion, she reported that her symptoms improved after the therapy that she underwent at Concentra; but that her symptoms returned about two weeks ago. This statement to treating personnel directly conflicts with her hearing testimony that she told “Tina,” whom she termed her “boss” at Pride Industries, that her hip was still hurting—and that she did this “before the year [2016] was out.” A left hip x-ray performed on July 7, 2017 disclosed that Claimant had “[c]oxa profunda on the left with acetabular over coverage concerning for underlying pincer type of femoroacetabular impingement.” But nothing before me indicates that this is acute, let alone tied to an incident that occurred well over a year prior. Left hip

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osteoarthritis—a degenerative finding—was disclosed in an x-ray performed on August 21, 2017.

During her same August 21, 2017 visit to the University of Arkansas for Medical Sciences (“UAMS”), Claimant for the first time mentioned her left lower extremity, stating that she was experiencing pain in her left thigh. The left knee was mentioned as well; but examination showed it to be stable. Concerning her back, it first appears in her medical records in evidence in the results of her December 8, 2018 left hip MRI, which read in pertinent part: “Sacro-iliac Joints: Normal. There is extensive facet arthropathy and neural foraminal narrowing involving the lower lumbar spine L4-S1.” These, of course, are strictly degenerative findings. I also note that the MRI showed Claimant’s left hip to have a “normal appearance” without significant degeneration, and that its bursae were “[n]ormal.”

When Claimant went to Drs. Sina Ekici and Heejung Choi at UAMS on January 2, 2019, she told them that after she treated at Concentra and was diagnosed as having a contusion, “the pain did not stop.” This statement is squarely at odds with her earlier medical records. Her hip MRI was reviewed, and she was diagnosed as having lumbar spondylosis and chronic radiculopathy. A lumbar MRI was recommended, and an L4-5 transforaminal epidural steroid injection was considered. Claimant was prescribed Gabapentin. The lumbar MRI took place on January 18, 2019 and minimal listhesis of L4 on L5 secondary to facet arthropathy, with mild disc degeneration and disc bulging at L4-5, along with mild facet arthropathy changes at L3-4 and L5-S1. These are degenerative, not acute, findings. Dr. Choi later stated that the MRI also showed a

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small, left-sided posterior extra spinal synovial cyst. Again, however, there is nothing to show that this or her other findings are acute in nature.

When Claimant presented to UAMS for treatment on February 7, 2019, she stated that when the rolling bin struck her, “her left lower extremity went numb for about 10 to 15 minutes.” This detail, which she also related at the hearing, is absent from her multiple histories prior to this date. That day, Dr. Richard McCarthy wrote:

During my examination I noted that she has pain over her left buttock SI joint and down into her trochanteric region which has little or nothing to do with her back. I reviewed her MRI which is normal other than some very mild changes in her facet joints. I have encouraged her to lose some weight and also asked that our Pain Service help her with some injections in these areas of her pain namely the SI joint and the trochanteric region. Believe these injections will help her to be better positioned to lose the weight that she needs to.

Notwithstanding the above, Dr. Choi on April 24, 2019 still held to the view that Claimant’s symptoms were lumbar in origin. She recommended a left sacroiliac joint injection. This procedure took place on May 20, 2019. No more injections were ordered, and she was continued on Gabapentin.

When Claimant saw Dr. Elizabeth Sullivan on October 17, 2019, she also tried to tie her neck pain and left arm pain and numbness to the bin incident. A lumbar MRI showed what appeared to be hemangiomas, which were noted on her previous MRI, along with degenerative findings. A “hemangioma” is “an extremely common benign tumor, occurring most commonly in infancy and childhood, make up of newly formed blood vessels, and resulting from malformation of angioblastic tissue of fetal life.” DORLAND’S at 823. This is certainly not an acute finding.

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In sum, Claimant has asserted that as a result of being hit with the bin on April 1, 2016, she suffered compensable injuries to her left leg and hip, and also her back. But there are no objective findings of such injuries. Accordingly, I cannot, and do not, find that she has proven that she sustained a compensable injury of any type. Her claim must fail at the outset.

B. Moot Issues

Because of the above findings concerning compensability, the remaining issues—whether the statute of limitations has run on Claimant’s claim for an alleged back injury, when notice was furnished of her alleged back injury, and whether she is entitled to reasonable and necessary medical treatment of her alleged injuries—are moot and will not be addressed.

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