

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G901208

JENNIFER R. WISE,
EMPLOYEE

CLAIMANT

SHERIDAN SCHOOL DISTRICT,
EMPLOYER

RESPONDENT

ARKANSAS SCHOOL BOARDS ASSOCIATION,
INSURANCE CARRIER/TPA

RESPONDENT NO. 1

DEATH & PERMANENT TOTAL
DISABILITY TRUST FUND

RESPONDENT NO. 2

OPINION FILED MARCH 17, 2021

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

Claimant represented by the HONORABLE LAURA BETH YORK, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE KAREN H. McKINNEY, Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE DAVID L. PAKE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed October 27, 2020. The administrative law judge found that the claimant failed to prove she sustained a compensable injury. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. The Full Commission finds that the claimant proved she sustained a compensable injury.

I. HISTORY

Jennifer Rose Wise, now age 48, testified that she was employed as a paraprofessional for the respondents. The parties have stipulated that the employer-employee relationship existed on February 15, 2019. The claimant testified on direct examination:

Q. Tell us what happened to you on February 15th, 2019.

A. Yes, ma'am. I was in my room, the room was my classroom that I shared with another paraprofessional and our counselor Melissa Brown came in and it was a little after ten o'clock....We were having assembly that day to honor some students and when we do that, we invite the students, who are being honored, their families to come in and they get to eat on stage in the cafeteria. So she came in a little nervous that the stage was not yet set up with tables and asked if I could, please, come help her move the tables from the utility closet up onto the stage....

And so we needed to move these tables that were – they were awkwardly sized....round tables that didn't fold....as I pulled one out, I noticed that if I rolled it onto my left foot, I could walk it up the stage stairs....when I moved the fourth table, I felt what I would describe as a twinge in my lower left side. And as I sat it down, I said, "Oh, I'll be feeling that tomorrow," because it was one of those moments. And so that was what happened that day....

Q. Now, did you report the injury at that time?

A. No, ma'am. I did not believe it was an injury.

The claimant testified that she completed her work day on February 15, 2019, a Friday. The claimant testified that she returned to work on Monday but that her back was "achy" at the end of the day. The claimant described the following Wednesday as "brutal." The claimant testified that she reported to the February 15, 2019 accidental injury to the respondent-

employer on Wednesday, and that the respondents arranged an appointment for her to be seen at The Winston Clinic.

According to the record, the claimant treated at The Winston Clinic on February 20, 2019. Danielle Dixon, PA-C noted at that time:

Pt here for workman's comp visit. Pt reports left sided low back pain x 6 days. Pt states she was lifting large tables and moving them up onto a stage at work on Friday. Pt reports having to lift the tables and move them up a small flight of stairs. Pt denies any acute fall or injury. Pt reports mild aching pain that improved over the weekend. Pt reports after being on her feet all day at work this week the pain returned and worsened. Pt reports pain radiates down L leg....
Msk: TTP over left SI joint, TTP over left lumbar paraspinals....
W/C Related? Yes Date of injury 02/15/2019

Danielle Dixon's impression was "Sciatica, acute." Ms. Dixon recommended conservative treatment and prescribed Cyclobenzaprine "1 po tid prn back pain."

The claimant testified that following her visit at The Winston Clinic, "At that point, the lower left part of my back was really horrible, horrible pain and it was starting to move down through my left buttock and starting to radiate down through my left leg." The claimant testified that a follow-up appointment at The Winston Clinic was not available and that the respondent-carrier had denied her claim.

The claimant therefore treated at MedExpress Pine Bluff on February 22, 2019: "Low back pain radiating down left buttock and leg to her knee

for the past week or so....Seen by PCP 2 days ago. Prescribed with Cyclobenzaprine and Ibuprofen. Pain started while moving some tables 1 week ago.” Dr. Remil Buslig reported upon physical examination on February 22, 2019, “Lower back normal in appearance, No midline tenderness noted to lower back, No paraspinous tenderness noted to lower back. No crepitation noted to lower back; ABNORMAL: Limp noted with walking, Full ROM during flexion in lower back but painful.” The claimant underwent an injection and was assessed with “Strain of muscle, fascia and tendon of lower back, initial encounter.” The Discharge Instructions were “BACK SPRAIN/STRAIN. Apply moist heat to affected area 4 to 6 times a day....Continue Ibuprofen 800mg, Cyclobenzaprine.”

The claimant treated at MedExpress Benton on February 23, 2019: “Patient comes in today for a Pain, Back. Was diagnosed with sciatica nerve pain 2 days ago, wasn’t given any instructions after diagnosis, went to another MedExpress yesterday and diagnosed with a back sprain, given Toradol and Decadron, prescribed Medrol pack, did not get an x-ray, not able to continue normal activity.” A Nurse Practitioner assessed “Low back pain” and noted, “We recommend you go immediately to the nearest Emergency Department for further evaluation.”

The claimant treated at St. Vincent Infirmiry Medical Center Emergency Department on February 23, 2019. It was noted at that time,

“Sent over by MedExpress for back pain that has started hurting in her leg and now the reflex in her left foot is gone. Worker’s comp/ on the 15th moved tables and got worse over the last week.” Examination of the claimant’s back showed “Lumbar: Left, moderate, tenderness. Testing: Straight leg raising, supine positive. Musculoskeletal: Normal ROM.” An MRI of the claimant’s lumbar spine was taken on February 23, 2019; Dr. Don L. Kusenberger indicated that the following findings were present:

Normal alignment of the lumbar spine is present. The signal intensity of the bone marrow is normal. Disc desiccation is seen at L4-5. There is mild congenital narrowing of the AP diameter of the spinal canal. The tip of the conus terminates at the inferior T12 level.

L5-S1 displays no disc herniation or protrusion, and the neural foramen are patent bilaterally. Note that L5 is the lowest rectangular lumbar type vertebra for purposes of numbering. L4-5 displays a mild broad based posterior bulge with facet hypertrophy. The AP diameter of the canal is 8 mm. A small right sided annular tear is present. Mild inferior neural foraminal narrowing is present bilaterally.

L3-4 displays a mild posterior bulge minimally indenting the thecal sac. Mild facet hypertrophy is present. The neural foramen are patent bilaterally.

L2-3 displays a mild posterior bulge and tiny central protrusion. This mildly indents the thecal sac. The neural foramen are patent bilaterally.

L1-2, T12-L1 and T11-12 are normal in appearance.

IMPRESSION:

Mild congenital narrowing of the AP diameter of the spinal canal is seen.

L4-5 with disc desiccation and a mild posterior bulge with facet hypertrophy. A tiny right sided annular tear is present.

L3-4 with a mild posterior bulge minimally indenting the thecal sac.

L2-3 displays a mild bulge with a tiny central protrusion.

There is no compression of adjacent neural structures.

Dr. Bradley K. Pate's diagnosis on February 23, 2019 was "Lumbar disc herniation." Dr. Pate transitioned care of the claimant to Dr. Stylianos Rammos.

Dr. Rammos noted on February 26, 2019:

The patient is a 46 year old woman who recently presented to the emergency department following a work related injury to her back. She complains of radiating pain that originates in the lower back and goes down left leg. She presents today to discuss treatment options....

I reviewed her MR L-spine with her in attendance, on PACS. There is presence of lumbar spondylosis and stenosis and bilateral foraminal stenoses L4-L5. We discussed the natural history of lumbar spondylosis and its anticipated course. We discussed surgical and non-surgical treatment modalities, including physical therapy, epidural steroid injections, oral steroids and NSAIDs. She will consider her options and let us know.

The claimant testified, "I understood that surgery could be avoided through physical therapy, so that's what we did." The claimant testified that she benefitted from physical therapy.

An assistant to Dr. Rammos informed the respondent-employer on March 6, 2019, "Mrs. Wise is currently under the care of Dr. Stylianos Rammos at the Arkansas Neuroscience Institute. Mrs. Wise may return to work on Tuesday, March 12, 2019, with no restrictions."

A pre-hearing order was filed on January 29, 2020. The claimant contended that "on or about February 15, 2019, she sustained a low back injury, and is entitled to medical, indemnity benefits, and attorney's fees."

The respondents contended that the claimant “did not sustain a compensable injury that arose out of and in the course of her employment. The Claimant did not report an injury until February 20, 2019. In the alternative, Respondents #1 assert a notice defense.” The parties agreed to litigate the issue of “compensability.”

A hearing was held on August 10, 2020. At that time, counsel for the claimant indicated there was not currently a claim for temporary total disability benefits. Counsel for the respondents indicated there was not a statutory notice defense. The claimant testified that she continued to suffer with pain “in my lower left side, right above the buttock....Since my physical therapy ended, I’m pretty much where I was at the end of physical therapy.” The claimant testified that she had returned to full-duty work for the respondents.

An administrative law judge filed an opinion on October 27, 2020. The administrative law judge found that the claimant failed to prove she sustained a compensable injury. The claimant appeals to the Full Commission.

II. ADJUDICATION

Ark. Code Ann. §11-9-102(4)(Repl. 2012) provides, in pertinent part:

- (A) “Compensable injury” means:
 - (i) An accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in

disability or death. An injury is “accidental” only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2012). “Objective findings” are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(4)(16)(A)(i)(Repl. 2012).

The employee has the burden of proving by a preponderance of the evidence that she sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Repl. 2012). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat’l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003), citing *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

In the present matter, the Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury. The claimant is employed as a paraprofessional for the respondents, Sheridan Elementary. The parties stipulated that the employment relationship existed on February 15, 2019. The claimant testified that she was helping the respondent-employer prepare for a school assembly. The claimant was setting up tables and testified that she felt a “twinge” on her lower left side while lifting a heavy, round table. The

claimant testified that at first she did not believe she had been injured. The claimant completed her work day but the pain in her left lower back gradually worsened. The claimant testified that she informed her supervisors the following Wednesday, February 20, 2019 that she had injured her back on Friday, February 15, 2019.

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. *Long v. Wal-Mart Stores, Inc.*, 98 Ark. App. 70, 250 S.W.3d 263 (2007). In the present matter, the Full Commission finds that the claimant was a credible witness. The Full Commission notes that the medical evidence of record expressly corroborated the claimant's testimony. The claimant received what was apparently authorized treatment at The Winston Clinic on February 20, 2019. It was specifically noted, "Pt here for workman's comp visit....Pt states she was lifting large tables and moving them up onto a stage at work on Friday....Date of injury 02/15/2019."

The report from the authorized medical provider on February 20, 2019 is clear probative evidence supporting the claimant's contention that she sustained a work-related injury. The Full Commission recognizes the note from the Physician's Assistant, "Pt denies any acute fall or injury." This notation by the physician's assistant does not diminish the claimant's

testimony that she hurt her back while lifting a table at work on February 15, 2019. Moreover, the Commission is charged with strictly construing the provisions of Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2012). See Ark. Code Ann. §11-9-704(c)(3)(Repl. 2012); *Amlease, Inc. v. Kuligowski*, 59 Ark. App. 261, 957 S.W.2d 715 (1997). The claimant is not required to prove, in accordance with any statutory provision of Ark. Code Ann. §11-9-102(4)(A)(Repl. 2012), that her work-related injury was “acute.”

The Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury in accordance with Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2012). The claimant proved that she sustained an accidental injury causing physical harm to the body. The claimant proved that the injury arose out of and in the course of employment and required medical services. The injury was caused by a specific incident and was identifiable by time and place of occurrence on February 15, 2019. Additionally, the claimant established a compensable injury by medical evidence supported by objective findings not within the claimant’s voluntary control. These objective medical findings included the annular tear at L4-5 by Dr. Kusenberger on February 23, 2019 as well as Dr. Pate’s February 23, 2019 diagnosis of “Lumbar disc herniation.” The Full Commission finds that Dr. Kusenberger’s and Dr. Pate’s diagnoses are entitled to significant evidentiary weight. *Minnesota*

Mining & Mfg. v. Baker, 337 Ark. 94, 989 S.W.2d 151 (1999). The Full Commission finds that the claimant’s objective medical findings were causally related to the February 15, 2019 accidental injury and were not the result of a prior injury or pre-existing condition.

After reviewing the entire record *de novo*, therefore, the Full Commission finds that the claimant proved she sustained a compensable injury. The claimant proved that the medical treatment of record submitted at the August 10, 2020 hearing was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). For prevailing on appeal to the Full Commission, the claimant’s attorney is entitled to a fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Palmer dissents.