

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H005899

CHERYL GREEN, Employee	CLAIMANT
WABASH WOOD PRODUCTS, Employer	RESPONDENT
SENTRY INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED MAY 4, 2023

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Harrison, Boone County, Arkansas.

Claimant appearing *pro se*.

Respondents represented by JARROD PARRISH, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On April 6, 2023, the above captioned claim came on for hearing at Harrison, Arkansas. A pre-hearing conference was conducted on February 1, 2023 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The claimant sustained a compensable injury to her left shoulder on June 18, 2020.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injuries to claimant's spine and brain on June 18, 2020.
2. Related medical.
3. Temporary total disability benefits.
4. Compensation rate.

The claimant contends that in addition to her left shoulder injury she also suffered compensable injuries to her spine (all three levels) and to her brain. She requests payment of related medical benefits and temporary total disability benefits.

The respondents contend that all appropriate benefits have been paid in this claim. Respondents have not controverted claimant's entitlement to benefits associated with her left shoulder. Claimant has not suffered compensable injuries to her brain or any part of her spine. To the extent claimant can establish compensability of any injury to her spine, the treatment with Dr. Gocio is not reasonable, necessary, and causally related to any acute work-related event occurring at Wabash. Claimant's claim for temporary total disability benefits is barred by the fact that any off work status she may have endured was not causally related to any work injury accepted or alleged. Respondents accommodated any restrictions claimant presented them with any she did not return to modified duty work when offered. Claimant's current problems, if any, are a result of a new accident or onset of symptoms occurring while she worked at Pace Industries.

From a review of the record as a whole, to include 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, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on February 1, 2023 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered compensable injuries to her brain, cervical spine, thoracic spine, or lumbar spine on June 18, 2020.

### FACTUAL BACKGROUND

Claimant is a 41-year-old woman with some college credit. She testified that she believes she began working for respondent in October 2019. At some point, she put in a bid for repair specialist and was placed in that position. Claimant was performing this job at the time of her accident on June 18, 2020, when she was struck by a heavy wooden board. Respondent has accepted a compensable injury to claimant's shoulder in the form of a rotator cuff tear. Claimant underwent surgery by Dr. Christopher Arnold to repair the tear on September 10, 2021.

Claimant has filed this claim contending that in addition to the left shoulder, she also suffered injuries to her brain, cervical spine, thoracic spine, and lumbar spine. She is requesting payment of medical expenses for those conditions as well as disability benefits for time missed from work.

### ADJUDICATION

Claimant contends that in addition to her compensable left shoulder injury, she

also suffered compensable injuries to her brain, cervical spine, thoracic spine, and lumbar spine on June 18, 2020. Claimant's claim is for a specific injury, identifiable by time and place of occurrence. Arkansas workers' compensation law requires that in order to prove a compensable injury as a result of a specific incident, identifiable by time and place of occurrence, the claimant must establish four things by a preponderance of the evidence:

- (1) an injury arising out of and in the course of employment;
- (2) that the injury caused internal or external harm to the body that required medical services or resulted in disability or death;
- (3) medical evidence supported by objective findings, as defined in A.C.A. §11-9-102(16), establishing the injury; and,
- (4) that the injury was caused by a specific incident identifiable by time and place of occurrence.

A.C.A. §11-9-102(4)(A)(i); *McCutchen v. Human Development Center*, 2018 Ark. App. 239.

Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan National Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W. 3d 252 (2003).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proof.

First, I find that claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her brain on June 18, 2020. I note that claimant has acknowledged that prior to June 18, 2020 she had been diagnosed as bipolar with depression and had been seeking mental health counseling. I also note that claimant acknowledged that she does not know if she suffered an injury to her brain on June 18,

2020, but was making that claim because Dr. Keegan had indicated that she had. Testimony regarding statements made by Dr. Keegan are hearsay and not credible evidence. No medical reports from Dr. Keegan are in evidence and there is no medical evidence supported by objective findings establishing an injury to claimant's brain. Therefore, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her brain on June 18, 2020.

Claimant also contends that she suffered compensable injuries to her cervical spine, thoracic spine, and lumbar spine on June 18, 2020. Claimant has received medical treatment from Dr. Allan Gocio for her spine. In a report dated March 18, 2021, he indicated that an MRI scan of claimant's cervical spine showed moderate to severe spondylosis C5-6 with spinal stenosis. Dr. Gocio recommended surgery in the form of an anterior cervical discectomy fusion at C5-6 and he performed that surgery on April 20, 2021.

Medical records submitted by the respondent indicate that claimant has an extensive history of chronic pain involving her spine. Medical records as far back as July 1, 2013 refer to chronic neck pain. In an emergency room report dated July 1, 2013, claimant was complaining of headaches that she felt were related to her chronic neck pain caused by a prior injury.

On August 8, 2013, claimant was evaluated by Dr. Ronald Tilley with complaints of pain in her neck, lower back, and mid-back. He indicated that claimant reported a work-related injury at Tyson and also a remote history of multiple car accidents that had aggravated lower back pain. He also stated that claimant had been experiencing this

pain for two years and that on average her pain rated 6/10 with a rating of 9/10 on that particular day. Dr. Tilley's report also states the following:

When she was injured on the job she underwent cervical MRI which showed herniated disc at c5-c6. She was supposed to undergo physical therapy and possible injection therapy, but then was lost to follow up.

This is the same location upon which Dr. Gocio performed surgery on April 20, 2021.

In his report of October 23, 2013, Dr. Tilley indicated that claimant was having lower back pain that was radiating down her left leg into her foot. He also stated that claimant had injections in the past that were not successful. Dr. Tilley treated claimant with hydrocodone.

Subsequent medical reports from Interventional Pain Clinic and the emergency room indicate that claimant continued to have complaints of chronic pain involving her spine for which she sought pain medication. Dr. Tilley even gave claimant a cervical epidural steroid injection on May 27, 2014.

On June 24, 2014, claimant was seen in the emergency room complaining of back pain and requesting pain medication and Xanax. On June 27, 2014, claimant was seen in the emergency room complaining of neck pain following a fall down stairs. On June 30, 2014, claimant was seen in the emergency room complaining of low back pain and requesting pain medication.

An ambulance report dated September 4, 2014 indicates that claimant was found sitting partially in a vehicle that had overturned with complaints of head and neck pain. A

cervical collar was applied. On April 15, 2015, claimant was seen in the emergency room with complaints that included neck pain following an alleged assault and requesting pain medication.

While it is clear that claimant had a pre-existing history of complaints involving her cervical, thoracic, and lumbar spine, claimant can still prevail if she can prove that those pre-existing conditions were aggravated by the incident on June 18, 2020. However, an aggravation is a new injury resulting from an independent incident, so it must meet the definition of a compensable injury in order to establish compensability for the aggravation. *Green County Judge v. Penney*, 2019 Ark. App. 552, 589 S.W. 3d 478.

June 18, 2020 was a Thursday and claimant was not scheduled to work on Friday. Claimant went back to work on Monday and went to report her problems to Corey Jackson. At the hearing claimant testified that she did not remember whether she mentioned having neck pain to Jackson at that time. She also acknowledged that at her deposition she testified that she did not mention neck pain to Jackson when she spoke to him because at that time only her shoulder was hurting.

The first medical report following the June 18, 2020 incident is a report from Dr. Jackson dated June 22, 2020, in which claimant is diagnosed with acute pain of the left shoulder. Notably, there is no mention of any complaints of pain involving the cervical, thoracic, or lumbar spine.

Claimant did eventually make those complaints and underwent surgery on her cervical spine by Dr. Gocio. However, as previously noted, his surgery was at the same level (C5-6) as claimant's prior complaints. Additionally, I note that claimant admitted that she did not inform Dr. Gocio about her prior spine complaints.

In short, I believe that claimant believes that she injured her brain, cervical spine, thoracic spine, and lumbar spine as a result of the incident on June 18, 2020. However sincere that belief, belief by itself is not sufficient. Instead, Arkansas workers' compensation law states that claimant has the burden of proving by a preponderance of the evidence that she suffered a compensable injury to her cervical, thoracic, and lumbar spine on June 18, 2020. I find based on the evidence presented that claimant has failed to meet that burden of proof. The medical evidence contains an extensive history of chronic pain involving claimant's spine for which she has sought medical treatment and pain medication. This history includes prior work injuries, motor vehicle accidents, personal accidents, and assaults. Following the incident on June 18, 2020 claimant did not mention any injury to Jackson other than her left shoulder. Likewise, at the time of her first medical treatment on June 22, 2020 claimant only mentioned left shoulder pain with no mention of her brain or any part of her spine. While claimant did undergo surgery on her cervical spine, the surgery was performed at the same location as claimant's prior complaints. I do not find based on the evidence that claimant has proven that her prior cervical, thoracic, or lumbar complaints were aggravated by the incident on June 18, 2020. Therefore, she has failed to prove a compensable injury to the cervical, thoracic, or lumbar spine.

### ORDER

Claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her brain, cervical spine, lumbar spine, or thoracic spine on June 18, 2020. Therefore, her claim for compensation

benefits is hereby denied and dismissed.

Respondent is liable for payment of the court reporter's charges for preparation of the hearing transcript.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE