

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H102269

HERSHEL HICE, Employee	CLAIMANT
LOGAN COUNTY, Employer	RESPONDENT
ASSOCIATION OF ARKANSAS COUNTIES WCT, Carrier	RESPONDENT

OPINION FILED MARCH 1, 2023

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MATTHEW J. KETCHAM, Attorney, Fort Smith, Arkansas.

Respondents represented by MICHAEL E. RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On February 6, 2023, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on December 14, 2022, 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 his low back on February 19, 2021.

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

1. Compensability of injury to claimant's right shoulder.
2. Claimant's entitlement to medical.

The claimant contends he suffered a compensable injury to his right shoulder on February 19, 2021. He contends he is entitled to medical as a result of the shoulder injury.

The respondents contend the claimant slipped and fell on ice on February 19, 2021. His initial complaint was of low back. An MRI revealed a pre-existing sacral fracture. No surgery was recommended. He then complained about his cervical spine and no surgery was suggested. Later, he started to complain of his shoulder. His shoulder was not injured in this accident. He has no objective findings of a shoulder injury.

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 witness and to observe his 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 December 14, 2022 and contained in a pre-hearing order filed that same date are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his right shoulder on February 19, 2021.

FACTUAL BACKGROUND

Claimant works for respondent's road department and on February 19, 2021, he fell onto an icy road while helping a coworker out of a ditch. According to claimant's testimony, he fell flat onto his back.

Medical records indicate that claimant was diagnosed with a closed fracture of the sacrum and coccyx and he also made some complaints of neck pain. On March 15, 2021, claimant was evaluated by Dr. Cheyne who noted that claimant was having both cervical and low back pain. Dr. Cheyne prescribed physical therapy for both of those conditions.

On April 1, 2021, claimant was again evaluated by Dr. Cheyne who noted that the physical therapy had not provided claimant much relief. Dr. Cheyne indicated that claimant should continue with his medications, physical therapy, and he also ordered an MRI scan of the lumbar spine.

Apparently, Dr. Cheyne also ordered an MRI scan of claimant's cervical spine which was performed on September 16, 2022, and revealed mild disc degeneration. On October 4, 2022 claimant did a telephonic visit with Dr. Barry Katz. In his report of that date, Dr. Katz stated:

He continues with shoulder pain greater than neck pain. His cervical MRI does not show severe stenosis. We talked about options. I will send him for pain management for his neck and to ortho to evaluate his shoulder. We will follow up and make further recommendations.

Claimant has filed this claim contending that he suffered a compensable injury to his right shoulder on February 19, 2021 and is requesting recommended treatment for his right shoulder.

ADJUDICATION

Claimant contends that he suffered a compensable injury to his right shoulder on February 19, 2021. Claimant's claim with regard to his right shoulder is a specific injury identifiable by time and place of occurrence. In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630.

Initially, it should be noted that respondent has only stipulated that claimant suffered a compensable injury to his low back. While claimant did receive some medical treatment for his neck following his injury, respondent has not stipulated that claimant suffered a compensable injury to his neck and no claim has been filed by claimant contending that he suffered a compensable injury to his neck. Instead, the only issue is whether claimant suffered a compensable injury to his right shoulder.

After my review of the relevant evidence, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his right shoulder on February 19, 2021. Specifically, claimant has failed to offer medical evidence supported by objective findings establishing a compensable injury. "Objective findings" are defined as findings which cannot come under the voluntary control of the patient. A.C.A. §11-9-102(16)(A)(i). Here, it is claimant's contention that

his treating physicians originally believed that his complaints involved his neck, but that those treating physicians now believe that his complaints are coming from his right shoulder.

As previously noted, respondent has never accepted liability for a compensable injury involving claimant's neck and claimant has not made a claim for an injury to his neck. Dr. Katz indicated that he would refer claimant to an orthopedic surgeon for an evaluation of the shoulder. Claimant was apparently evaluated by a nurse practitioner, Patrick Walton, who recommended an MRI scan of claimant's right shoulder; however, that MRI scan has not been performed and no other testing on claimant's right shoulder has been performed. Furthermore, there are no other objective findings regarding the shoulder noted in the medical evidence. Therefore, there is no objective evidence of an injury to claimant's right shoulder. Absent objective findings, claimant cannot meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his right shoulder.

In short, in order to prove a compensable injury to his right shoulder, claimant must offer medical evidence supported by objective findings establishing his injury. Here, claimant has offered no objective findings regarding his right shoulder. Therefore, he has failed to meet his burden of proof.

ORDER

Claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his right shoulder on February 19, 2021. Therefore, his claim for compensation benefits is hereby denied and dismissed.

Respondents are liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$253.95.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE