

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H203952**

SHARON SIMPSON, EMPLOYEE

CLAIMANT

**ST. VINCENT INFIRMARY MED. CTR.,
EMPLOYER**

RESPONDENT

**INDEMNITY INS. CO. OF NO. AMER.,
CARRIER**

RESPONDENT

OPINION FILED MARCH 29, 2023

Hearing before Administrative Law Judge O. Milton Fine II on February 14, 2023, in Little Rock, Pulaski County, Arkansas.

Claimant *pro se*.

Respondents represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On February 14, 2023, the above-captioned claim was heard in Little Rock, Arkansas. A prehearing conference took place on December 12, 2022. The Prehearing Order entered that day 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

The parties discussed the stipulations set forth in Commission Exhibit 1. With an amendment of the fourth at the hearing, they now read:

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1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/employer/carrier relationship existed on May 18, 2022, and at all other relevant times.
3. Respondents have controverted this claim in its entirety.
4. Claimant's average weekly wage entitles her to compensation rates of \$774.00/\$580.00.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit

1. The following were litigated:

1. Whether Claimant sustained compensable injuries to her left ankle and right knee by specific incident.
2. Whether Claimant is entitled to reasonable and necessary medical treatment.
3. Whether Claimant is entitled to temporary total disability benefits.

All other issues have been reserved.

Contentions

The respective contentions of the parties are:

Claimant:

1. Claimant contends that she sustained compensable injuries to her left ankle and right knee when she fell twice on May 18, 2022, and that she is entitled to benefits pursuant thereto.

Respondents:

1. Claimant was not performing employment services at the time of the accident. She fell in the parking lot before reporting to her workstation. Claimant has no objective medical evidence to support her claim. She did not miss enough time from work to be eligible for temporary total disability benefits.
2. This matter has been dismissed by order of an administrative law judge dated September 29, 2022. There was no appeal from that order within 30 days. Claim No. H203952 has been dismissed.¹

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the evidentiary record, and having had an opportunity to hear the testimony of the claimant and to observe her 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.

¹Respondents have not raised this as an issue. I cannot address such an issue *sua sponte*. See *Carthan v. School Apparel, Inc.*, 2006 AR Wrk. Comp. LEXIS 451, Claim No. F410921 (Full Commission Opinion filed November 28, 2006)(improper for administrative law judge to address issues *sua sponte*); *Singleton v. City of Pine Bluff*, 2006 AR Wrk. Comp. LEXIS 79, Claim No. F302526 (Full Commission Opinion filed February 23, 2006), *rev'd on other grounds*, No. CA06-398 (Dec. 6, 2006) (unpublished)(same). Regardless, I note that Claimant filed a Form AR-C on September 29, 2022, after Administrative Law Judge Terry Don Lucy entered an order of dismissal. See *Sinclair v. Magnolia Hospital*, 1998 AR Wrk. Comp. LEXIS 786, Claim

2. The stipulations set forth above are reasonable and are hereby accepted.
3. Respondents' objection to the admission of Claimant's Proffered Exhibit 3 is sustained; it will not be admitted into evidence.
4. Claimant has not proven by a preponderance of the evidence that she sustained a compensable injury either to her left ankle or to her right knee.
5. Because of Finding/Conclusion No. 4 *supra*, the remaining issues—whether Claimant is entitled to reasonable and necessary medical treatment and temporary total disability benefits—are moot and will not be addressed.

PRELIMINARY RULING

Admission of Claimant's Proffered Exhibit 3

At the hearing, Claimant moved for the admission of this proffered exhibit, which contains her medical records. Respondents' counsel objected to its admission, stating that he was not furnished with a copy thereof at least seven days before the hearing.

The Prehearing Order reads in pertinent part:

Exhibits and the identity of witnesses must be exchanged at least seven (7) days prior to the hearing. All depositions must be completed prior to the hearing. Medical reports must be exchanged at least seven (7) days prior to the hearing pursuant to Ark. Code Ann. § 11-9-705(c)(2)(A) (Repl. 2012). Evidence not disclosed in compliance with this Order shall not be considered as evidence unless prior permission of the Commission is obtained and for good cause shown.

After Claimant offered the proffered exhibit into evidence, the following lengthy colloquy took place:

JUDGE FINE: Mr. Ryburn, do you need a second to examine anything she is wanting to offer or do you have a response to this?

MR. RYBURN: Miss Simpson did call me late last week and says, "I'm gonna fax you something." She did fax me some medical records. She did say, "I know it's late. I know they're not within the seven-day rule." And I said, "I'll have to look at them and either make an objection or not make an objection, but I don't know what I'm talking about yet until I get them." And sent two different packages; one came I think Friday and one came Monday.

JUDGE FINE: All right.

MS. SIMPSON: I hope they both came the same day. I'm sorry.

JUDGE FINE: All right. Let me ask you: is Mr. Ryburn correct on what he just stated to me?

MS. SIMPSON: He is correct.

JUDGE FINE: All right. Now today is Tuesday, February 14th.

MS. SIMPSON: Correct.

JUDGE FINE: Now you testified that you read my Prehearing Order. Do you recall that?

MS. SIMPSON: Yes.

JUDGE FINE: And do you recall me talking to you during the prehearing telephone conference saying that you have to get any medical records that you want admitted into evidence to Mr. Ryburn at least seven days before the hearing? Do you remember me explaining that to you?

MS. SIMPSON: Yes, I have your notes. I made notes. Yes.

JUDGE FINE: All right. Did you get a copy of your medical records, the ones that you want into evidence; did you get those to Mr. Ryburn at least seven days before the hearing?

MS. SIMPSON: I didn't, Your Honor, and I'm gonna tell you why I didn't.

JUDGE FINE: All right.

MS. SIMPSON: I had my original medical records when I was under the care of Dr. Vargas. I had my original medical records when I was under the care of Dr. Kirk Reynolds. I needed the final medical records that I could get from Dr. Gordon. I had called his office, and they told me, when we had this little ice storm here last week, that he had transcribed it, then he called back and said, "Well, we don't see where he's transcribed it." Then I finally got a notification—an email stating "Dr. Gordon has finished—completed the medical records. We will send them over." I looked back at my notes and that's when I saw seven days. I said, "Okay. Wait a minute. I – I've missed my timeline here. Let me notify—let me see if I can call Mr. Ryburn and see if I can fax 'em over or either can I hand-deliver those to him." And I did. I faxed 'em to him. But again—and I know this is just—I guess maybe that's why I need an attorney. I was thinking on the evidence of burden is what I was really trying to argue.

JUDGE FINE: Well, let me stop and go through a couple [of] things with you based on what you just said. With regard to an attorney, you're saying that you need an attorney. Do you recall me, at the beginning of your prehearing conference, telling you that you had the right to have an attorney?

MS. SIMPSON: Right.

JUDGE FINE: And do you recall telling me that you wanted to go ahead and proceed without a lawyer?

MS. SIMPSON: Right. And I asked the attorney that I have, that's representing me for the hospital, if he could help me with this, and he told me—

JUDGE FINE: Well, respectfully, I don't want to get into any attorney-client privileged communication you have had with a lawyer in a matter. But what I did want to confirm is that you were told that you could have a lawyer, and that, in fact, you could even postpone that prehearing conference and try to get a lawyer. Do you remember that?

MS. SIMPSON: Yes, I remember it.

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JUDGE FINE: But you elected to go ahead and say you wanted to represent yourself. Do you recall that?

MS. SIMPSON: I do recall it.

JUDGE FINE: All right. And with regard to—and basically what I understand your testimony is on your records and what I'm hearing from you is that you had your medical records except for the records from Dr. Gordon's office.

MS. SIMPSON: Correct. Yes, sir.

JUDGE FINE: But you delayed on getting them to Mr. Ryburn because you didn't have Dr. Gordon's records.

MS. SIMPSON: Right.

JUDGE FINE: Why didn't you go ahead and give Mr. Ryburn, at least seven days before the hearing, the records you did have?

MS. SIMPSON: Because I wanted to have everything. And at that point when I—his office kept delayin' and sayin' that he hadn't transcribed.

JUDGE FINE: "His office" being Dr. Gordon?

MS. SIMPSON: Yes, Dr. Gordon. Then his—the nurse was saying, you know, he hadn't—I kept tryin' to get those records.

[T. 72-77]

The determination of a witness' 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.*

I credit Claimant's testimony as outlined above. The evidence shows that even though she was to "exchange" medical records—i.e., provide a copy to the other side—within the seven-day period prescribed by § 11-9-705(c)(2)(A) and the Prehearing Order, she did not do so. Instead, as Respondents' Exhibit 1 shows, Claimant faxed the proffered exhibit to Respondents' counsel on February 10, 2023. This was just four days before the hearing.

Respondents have not consented to a waiver of the violation per § 11-9-705(c)(4). Nonetheless, pursuant to § 11-9-705(c)(3), I have the discretion to admit or exclude the evidence. *See Coleman v. Pro Transportation, Inc.*, 97 Ark. App. 338, 249 S.W.3d 149 (2007). But under the circumstances presented here, I cannot properly admit the evidence. Claimant acknowledged being aware of the deadline. Her explanation for failing to meet it was her inability to obtain her medical records from one of her providers. But this does not explain why she did not mitigate the situation by tendering the records that she did have to Respondents by February 7, 2023. The unavailability of Gordon's records did not justify her wholesale failure to meet the seven-day deadline with regard to her medical records exhibit. Consequently, Claimant's Proffered Exhibit 3 will not be admitted into evidence, and will not be considered. *See Jobe v. St. Vincent North/Sherwood*, 2005 AR Wrk. Comp. LEXIS 206, Claim No. F105594 (Full Commission Opinion filed May 27, 2005), *aff'd sub nom. St. Vincent Health Systems v. Jobe*, No. CA 05-823 (Ark. Ct. App. Feb. 8, 2006)(unpublished).

CASE IN CHIEF

Summary of Evidence

Claimant was the sole witness at the hearing.

Along with the Prehearing Order discussed above, the exhibits admitted into evidence in this case were Claimant's Exhibit 1, a job description for the position of Telecommunications Manager, consisting of five numbered pages; Claimant's Exhibit 2, a typewritten statement signed and dated May 17, 2022, by Donovan Kindle, consisting of one page; and Respondents' Exhibit 1, a facsimile cover sheet addressed to Respondents' counsel from Claimant and dated February 10, 2023, consisting of one page.

Adjudication

Claimant, who is a high school graduate and who completed three years of college, testified that on May 18, 2022, she was employed by Respondent St. Vincent Infirmary Medical Center ("St. Vincent") as the Telecommunications Manager. Her account was that she fell twice at approximately 6:50 a.m. that day after she parked in the St. Vincent employee parking lot and was en route to the building where she worked:

I had arrived. That morning I didn't stop to get coffee because I was gonna get coffee inside. I wasn't running late. My bags, I always set them in the back seat because it's kinda like an incline and I just don't want them to fall forward and then stuff is everywhere. I had locked my car—well, I grabbed my bags and I locked my car. I had my badge where I could get it. I was proceeding to walk, and when I got ready to walk out of that parking lot to go forward into the other parking lot—when I walked, I made a step, and I was down . . . [r]ight at the physician's gate . . . I

tripped in a hole . . . [w]ell, when I came—when I realized I was—I looked up and I fell, and I looked down and I was in the hole.

[T. 24-25] However, per Claimant, that was not her only fall of the morning:

That was the first time I fell. I kinda set [sic] there and looked around, 'cause I was embarrassed, and I proceeded to get up. I had my purse—it was on the ground and I remember pushing up off my purse. When I pushed up off my purse, I kinda pulled myself together I proceeded to walk. When I proceeded to walk, the—when I proceeded to walk—when I made another four or five, six, seven steps, that's when I went down in a major pothole. My leg went under me. My purse—everything went everywhere and I was down . . . [w]hen I fell the second time, I couldn't move. I—I tried to get up as I did the first time when I fell. I remember I was in pain and every time I tried to get up, this leg [indicating] just wouldn't allow me. The right ankle, I twisted it the first fall, so I'm just there.

[T. 25-26, 29]

A nursing supervisor came out on the grounds of the hospital to assess Claimant. After treating personnel were able to get her up and into a wheelchair, Claimant was taken to the emergency room there. She was examined, and x-rays were taken. Since then, she has seen four different physicians: her primary care physician, Dr. Eric Joseph, at CHI St. Vincent South Clinic; and Drs. Victor Vargas, Kirk Reynolds, and Eric Gordon at OrthoArkansas. These individuals treated both Claimant's left ankle and right knee. Vargas had her undergo MRIs on those joints. Reynolds, in turn, evaluated those MRIs and scheduled surgery on her knee. After the surgery was delayed, Gordon took over her case and rescheduled the procedure for March 30, 2023—after the date of the hearing.

A. Whether Claimant sustained a compensable injury.

Claimant has asserted that as a result of two falls in the parking lot of her place of employment on the morning of May 18, 2022, she sustained compensable injuries to her left ankle and right knee. Respondents have countered that she did not suffer a work-related injury, alleging, inter alia, that (1) any injury was not sustained while Claimant was performing employment services; and (2) there were no objective findings of an injury.

In Ark. Code Ann. § 11-9-102(4)(A)(i) (Repl. 2012), “compensable injury” is defined as follows:

(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. *Id.* § 11-9-102(4)(D). “Objective findings” are those findings that cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16)(A)(i). The element “arising out of . . . [the] employment” relates to the causal connection between the claimant’s injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant’s employment “when a causal connection between work conditions and the injury is apparent to the rational mind.” *Id.* If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). See § 11-9-

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102(4)(E)(i). This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

At the outset, I must point out that the evidentiary record before me is devoid of any medical evidence, supported by objective findings, that Claimant sustained an injury of any sort. Thus, she has not proven that she suffered a compensable injury.

B. Remaining issues.

Claimant has also argued that she is entitled to reasonable and necessary medical treatment and to temporary total disability benefits. But, since she has not established that she sustained a compensable injury, these issues are moot and will not be addressed.

CONCLUSION

In accordance with the findings of fact and conclusions of law set forth above, this claim for initial benefits is hereby denied and dismissed.

IT IS SO ORDERED.

Hon. O. Milton Fine II
Chief Administrative Law Judge