

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H104308

KEITH W. SMITH,
EMPLOYEE

CLAIMANT

ROCK DENTAL ARKANSAS, PLLC,
EMPLOYER

RESPONDENT

CINCINNATI CASUALTY COMPANY,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED MARCH 7, 2024

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

Claimant represented by the HONORABLE LAURA BETH YORK and B. TANNER THOMAS, Attorneys at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE GUY ALTON WADE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed July 27, 2023. The administrative law judge found that the claimant failed to prove he sustained a compensable injury. After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury.

I. HISTORY

The testimony of Keith Wayne Smith, now age 68, indicated that he became a dentist in 1984. Dr. Smith testified that he began working for the respondent-employer, Rock Dental Arkansas, in October 2020. The

claimant testified that he commuted to the respondents' office in Helena, Arkansas. The parties stipulated that the employee-employer relationship existed on April 19, 2021. The claimant testified on direct examination:

Q. Let's focus in on April 19 of '21. Can you tell me what happened that day?

A. Having a better memory sometimes than I can realize, one of the assistants had been on vacation and had come back from vacation on that date. She'd been on a cruise of some sort and had returned to work on that Monday, the 19th. And we were looking at the schedule, people were being allocated to the chairs as usual, and I went to brew some tea. I apparently had put it into the microwave to brew, and then when I went back to retrieve it and make tea or whatever I was going to do – I think I was using iced tea, because it was April, getting warmer, and I stumbled and fell over some chairs. They were kind of like conference chairs for a conference table. And as I have stated prior, it was a very large table in a fairly constricted space, so the chairs were usually not in a neat fashion, they were kind of in a disarray, you might say, and I had to go from the door, which is on one end of the room to the back of the room, which is past the table, if you will, and I fell. And I stumbled and it felt like - I mean, I've stumbled before for one reason or another, but it felt different. I was hurting. I was able to pull myself up, get in a chair, but apparently the others heard, you know, a commotion of some nature and came to see what was going on, and I was white. I mean, I was in sort of a shock. I don't really remember all the details of what was said around me and all such as that, but I did pull up in a chair. If I was sitting upright in a chair I could make some sense. Apparently I had started a procedure with one of the patients with anesthesia, and I did, was able to go back even after the injury and finish what I had started....

Q. Do you remember how your foot caught the chair?

A. No.

Q. And do you remember how you fell?

A. Forward.

The respondents' attorney cross-examined the claimant:

Q. Now, at the time of this particular claim you were working for Rock Dental at their clinic in Helena, correct?

A. Yes, sir....

Q. You would arrive at the office at approximately 8 o'clock, and this happened some time, as you described, between 8:00 and 8:30, is that right?

A. Yes.

Q. Now, you have told me that you are actually making tea and had been brewing it in the microwave, is that right?

A. Correct.

Q. Left it in the microwave, went to see a patient, and you were on your way back to get the tea from the microwave?

A. Right.

Q. Now the tea in this microwave is in your conference room/breakroom, is that correct?

A. Yes.

Q. And you did not actually physically make it to the microwave and fell on your way to the microwave, correct?

A. Yes.

Q. Now, in the deposition I asked you if before the fall whether you had become light-headed or dizzy, and you said not whatsoever, do you remember that?

A. Yes, I do.

Q. So you don't recall actually becoming dizzy or light-headed on the way to the microwave, is that right?

A. No.

Q. Now, you also responded that you never reported to anyone that you had been light-headed or dizzy before the fall, is that correct?

A. Yes.

Q. Now, there was nothing on the floor that caused you to fall?

A. Other than the chairs, no.

Q. There wasn't any bananas or food or liquids or anything that you noticed on the floor, correct?

A. No.

Q. So you didn't slip in anything? Nobody had just waxed the floor or put any type of objects or materials that would cause you to slip, correct?

A. No.

Q. Now, after the fall there were people that came in the breakroom and tried to figure out what the noise was, is that right?

A. Yes.

Q. Now, the office manager actually called an ambulance, which picked you up and took you to the Helena Regional Medical Center?

A. That's correct.

The record contains a Patient Care Report from Pafford Medical Services – Helena dated April 19, 2021:

D-DISPATCHED PRIORITY 1 CODE 3 TO THE FAMILY DENTISTRY OFFICE ON PLAZA FOR A FALL
C-C/C IS A FALL WITH INJURY.
H-THE PT HAS A HX OF HTN, OBESITY, DEPRESSION
A-ASSESSMENT REVEALS A 65 YEAR OLD WHITE MALE, FOUND LAYING IN AN EXAM CHAIR IN ONE OF THE EXAM ROOMS WHEN WE ARRIVE. THE PT STATES THAT HE FELL IN THE BREAK ROOM AROUND 0830, AND THAT HE NOW HAS PAIN IN HIS LOWER BACK. HE DOES STATES (sic) THAT JUST PRIOR TO FALLING HE FELT DIZZY AND LIGHTHEADED. THE PT'S V/S ARE STABLE OTHER THAN HIS HEART RATE, WHICH IS NOTED TO BE BRADYCARDIC....
T-THE PT WAS TRANSPORTED ROUTINE STATUS TO HRMC ER....

Dr. Jeff Audibert treated the claimant at Helena Regional Medical Center on April 19, 2021: "This 65-year-old white male dentist stood up & felt dizzy and lightheaded, then fell to the floor. He does feel slight low back pain. No chest pain or shortness of breath. No headache or neck pain. He does not feel sick at this time. His heart rate is 53. He is on a beta-blocker. No other complaints at this time." Dr. Audibert diagnosed "Dizziness and giddiness; Sprain of ligaments of lumbar spine."

An x-ray of the claimant's lumbar spine was taken on April 19, 2021 with the impression, "No significant findings in the LS spine. Dilated loops of jejunum could be related to gastrostomy."

Dr. Christopher R. Blackmon, D.C. examined the claimant on May 7, 2021: "Keith sought treatment today, complaining of intermittent sharp and throbbing discomfort in the low back....Assessment: Keith has a new condition." Dr. Blackmon diagnosed "Wedge compression fracture of T11-T12 vertebra[.]"

Jim Cavanaugh, a claims adjuster with the respondent-carrier, testified that he interviewed the claimant by telephone on May 11, 2021.

The respondents' attorney examined Mr. Cavanaugh at hearing:

Q. Now when you talked to Dr. Smith, did you ask him how he fell or what led to his fall?

A. Yes.

Q. What was his response? What did he tell you?

A. He indicated that, you know, he went to the breakroom to obtain a drink I think perhaps from the microwave when he fainted or lost consciousness in the breakroom.

Q. So he indicated to you that he had actually fainted or passed out, which caused the fall?

A. Yes. Based on our conversation, that's what it was indicating, what he was indicating, you know, given any other explanation at that time....

Q. Did you ask him if he tripped or slipped or fell over anything?

A. I did. I did.

Q. And what was his response?

A. He did not think that that was an aspect related to his fall.

Q. That he didn't trip over a chair or a table or any other object that was in the floor?

A. Correct.

An MRI of the claimant's lumbar spine was taken on May 20, 2021 with the following impression:

1. Acute to subacute superior endplate compression fracture of T12 with vertebral body height loss of up to 25%.
2. Advanced facet arthropathy at L4-5 and L5-S1 with moderate to severe narrowing of the left neural foramen at L4-5.

The claimant testified that the respondents terminated his employment on May 22, 2021.

The claimant underwent "Uncomplicated T11, and T12 vertebroplasty procedures" on June 1, 2021.

Dr. Blackmon corresponded with the claimant's attorney on February 8, 2023:

Please allow me to summarize my treatment of Dr. Keith Smith.

Dr. Smith presented himself to this office on 5/7/2021 with the chief complaint of right upper low back pain, hip pain, and leg pain. He stated that he had suffered a back injury at his work location in Helena, Arkansas on 4/19/2021. He was initially taken to the emergency room at Helena Regional Medical Center. He was told that he didn't have any fractures. However, his pain continued with little to no improvement so he sought care at this office.

On his initial visit, x-rays were taken and revealed 2 spinal compression fractures in the lower thoracic spine. He was referred to his primary care physician for treatment of the fractures. An MRI was performed and confirmed the spinal fractures. He was then referred for kyphoplasty to repair the 2 compression fractures.

Post surgically, I saw Dr. Smith on 06/10/21 and 6/25/2021. He explained that he had been convalescing and allowing some down time for healing. Unfortunately, he stated that he

needed to return to work which prevented him from continuing on the treatment plan.

Recently, beginning in November of 2022, I have seen Dr. Smith for follow up treatment secondary to the aforementioned kyphoplasty. He reports protracted soreness, and tightness in the affected thoracic region. He has been under regular chiropractic care from 11/11/2022 to present. At the 11/11/2022 appointment, secondary x-rays were taken and these images revealed the surgical repair (kyphoplasty) of the thoracic vertebrae. Some residual scar tissue is also present. The ongoing maintenance therapy is to maintain comfort, especially in light of the patient's occupation, and also, to keep range of motion at a maximum. Lastly, this will ensure long range patient comfort.

Please let me know if I can be of further assistance to you or your office.

A hearing was held on March 8, 2023, at which time an administrative law judge announced the parties' contentions. The claimant contended, among other things, that he fell and injured his back in the course and scope of employment on April 19, 2021, and that he sustained a compensable injury. The claimant contended that he was entitled to medical treatment, temporary total disability benefits, and fees for legal services.

The parties stipulated that the respondents "have controverted the claim in its entirety." The respondents contended that the claimant did not sustain a compensable injury. The respondents' attorney stated that there were two defenses to the claim: "One is course and scope, the other is idiopathic, in neither case which would mean it was compensable."

An administrative law judge filed an opinion on July 27, 2023. The administrative law judge found that the claimant did not prove he sustained a compensable injury. The administrative law judge therefore denied and dismissed the claim. 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 also be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2012).

The employee has the burden of proving by a preponderance of the evidence that he 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).

An idiopathic injury is one whose cause is personal in nature, or peculiar to the individual. *Crawford v. Single Source Transp.*, 87 Ark. App. 216, 189 S.W.3d 507 (2004), citing *Kuhn v. Majestic Hotel*, 324 Ark. 21, 918

S.W.2d 158 (1996). Injuries sustained due to an unexplained cause are different from injuries where the cause is idiopathic. *ERC Contractor Yard & Sales v. Robertson*, 335 Ark. 63, 977 S.W.2d 212 (1998). Where a claimant suffers an unexplained injury at work, it is generally compensable. *Little Rock Convention & Visitors Bur. v. Pack*, 60 Ark. App. 82, 959 S.W.2d 415 (1997). Because an idiopathic injury is not related to employment, it is generally not compensable unless conditions related to the employment contribute to the risk. *Id.* Employment conditions can contribute to the risk or aggravate the injury by, for example, placing the employee in a position which increases the dangerous effect of the fall, such as on a height, near machinery or sharp corners, or in a moving vehicle. *Id.* See also *Delaplaine Farm Center v. Crafton*, 2011 Ark. App. 202, 382 S.W.2d 689.

In workers' compensation cases, the Commission functions as the trier of fact. *Blevins v. Safeway Stores*, 25 Ark. App. 297, 757 S.W.2d 569 (1988). 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 it deems worthy of belief. *Farmers Co-op v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002). The Full Commission reviews an administrative law judge's opinion *de novo*, and it is the duty of the Full Commission to conduct its own fact-finding independent of that done by an administrative law judge. *Crawford v. Pace Indus.*, 55

Ark. App. 60, 929 S.W.2d 727 (1996). The Full Commission enters its own findings in accordance with the preponderance of the evidence. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348 (1990).

An administrative law judge found in the present matter, “3. The claimant failed to prove, by a preponderance of the evidence, that he suffered a work-related injury by specific incident.” The Full Commission finds that the claimant sustained an idiopathic injury which was not related to the claimant’s employment and was not compensable.

The claimant, a dentist by profession, testified that he became employed with the respondents in October 2020. The parties stipulated that the employee-employer relationship existed on April 19, 2021. The claimant testified that he “fell and stumbled over some chairs” that day while walking to a microwave in the respondent-employer’s breakroom. The claimant testified that he pulled himself up, sat in a chair, and eventually returned to work. The claimant testified on cross-examination that he had not felt “lightheaded or dizzy” before falling in the breakroom. The Full Commission finds that the claimant was not a credible witness. *Farmers Co-op, supra*. The Patient Care Report from Pafford Medical Services, dated April 19, 2021, indicated that the claimant indeed “felt dizzy and lightheaded” before falling in the breakroom that morning. Dr. Audibert, an examining physician, corroborated the report from Pafford Medical

Services. Dr. Audibert reported on April 19, 2021 that the claimant “stood up & felt dizzy and lightheaded, then fell to the floor.” An x-ray on April 19, 2021 showed “no significant findings” in the claimant’s lumbar spine.

The record shows that the claimant sustained an idiopathic injury on April 19, 2021 which was not related to the claimant’s employment and was not compensable. The probative medical evidence demonstrates that the claimant became “dizzy and lightheaded,” a personal condition which led to the claimant’s fall in the respondents’ breakroom. The Full Commission finds that Jim Cavanaugh, a claims adjuster with the respondent-carrier, was a credible witness whose testimony was corroborated by the record. Jim Cavanaugh testified that the claimant informed him “he fainted or lost consciousness in the breakroom.” Mr. Cavanaugh agreed that the claimant did not report a “trip over a chair or a table or any other object” in the breakroom. There is no probative evidence demonstrating that any conditions related to the claimant’s employment contributed to the risk of falling, which fall was caused by an idiopathic event. The record does not corroborate the claimant’s testimony that he tripped over a chair, and the record does not show that the claimant was working on a height, near machinery or sharp corners, or in a moving vehicle. *Pack, supra.*

After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge’s finding that the claimant did not prove

by a preponderance of the evidence that he sustained a compensable injury. The evidence demonstrates that the claimant sustained an idiopathic injury on April 19, 2021 which was not related to the claimant's employment and was not compensable. The claimant did not prove that he was entitled to any medical treatment of record or temporary total disability benefits. This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

MICHAEL R. MAYTON, Commissioner