

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
AWCC FILE № H304343**

DIANA COLEMAN, EMPLOYEE	CLAIMANT
YOUTH HOME, INC., SELF-INSURED EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, TPA	RESPONDENT

OPINION FILED 8 OCTOBER 2024

Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 10 July 2024 in Little Rock, Arkansas.

Proctor & Malone, Mr. Willard Proctor, for the claimant.

Worley, Wood & Parrish, P.A., Ms. Melissa Wood, for the respondents.

I. STATEMENT OF THE CASE

The above-captioned case was heard on 10 July 2024 in Little Rock, Arkansas. The parties participated in a pre-hearing telephone conference on 23 April 2024. A Prehearing Order, admitted to the record without objection as Commission's Exhibit № 1, was entered on 25 April 2024.

The parties agreed to the following STIPULATIONS:

1. The AWCC has jurisdiction over this claim.
2. The employee/self-insured employer/TPA relationship existed at all relevant times, including on 19 June 2023, the date of the alleged compensable injury.
3. The claimant's average weekly wage at the time of the work incident would entitle her to the maximum compensation amounts for temporary total disability (TTD) benefits and partial permanent disability (PPD) benefits.
4. The respondents have controverted this claim for any additional benefits.

The parties agreed on the following ISSUES TO BE LITIGATED¹:

1. Whether the claimant suffered a compensable injury.
2. Whether the claimant is entitled to the benefits associated with a compensable injury to her right hip, knee, and thigh by specific incident.
3. Whether the claimant is entitled to an attorney's fee.

All other issues were reserved.

The parties' CONTENTIONS, as set forth in their Prehearing Questionnaire Responses, were incorporated into the Prehearing Order.

Per the claimant's CONTENTIONS, she is entitled to temporary total benefits from the date of the injury to the end of her healing period.

Per the respondents' CONTENTIONS, the claimant did not suffer a compensable injury on 19 June 2023. There are no objective findings of a work-related injury.² The medical documentation does not support entitlement to additional medical benefits or indemnity benefits associated with the 19 June 2023 incident.

The following WITNESSES testifying at the hearing: the claimant testified on her own behalf, and the respondents called Ms. Kelly Destafano, who worked in Human Resources at the time of the incident.

The EVIDENCE presented consisted of the testimony along with Commission's Exhibit No 1 (the 25 April 2024 Prehearing Order), Claimant's Exhibit No 1 (seven pages of

¹ The Prehearing Order reflects whether the claimant's healing period had ended as an Issue. At the hearing, however, the claimant acknowledged an end to her healing period and asserted that the period ran from 26 June 2023 to 15 September 2023. See TR at 95.

² The Respondents' Prehearing information denied compensable injuries to the claimant's right thigh and hip. At the hearing, they made clear that any claim(s) related to a compensable right knee injury were also denied. The claimant concurred with that clarification. [TR at 9.]

medical records), and Respondents' Exhibit Nos 1 (7 pages of medical records) and 2 (nine pages of non-medical records).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record as a whole and having heard testimony from the witnesses, observing their demeanor, I make the following findings of fact and conclusions of law under ACA § 11-9-704:

1. The AWCC has jurisdiction over this claim.
2. The previously noted stipulations are accepted as fact.
3. The claimant failed to prove by a preponderance of the evidence that she suffered a compensable injury.
4. The claimant is, therefore, not entitled to the benefits sought, and she is not entitled to an attorney's fee.

III. HEARING TESTIMONY & MEDICAL EVIDENCE

Claimant Diana Coleman

The claimant testified that she has worked for the respondent-employer since 1988. Her title at the time of the incident at issue was Residential Treatment Counselor, which she described as a behavioral paraprofessional. According to her testimony, the respondent-employer provides residential programs for male youths who have experienced issues of abuse, neglect, abandonment, and the like.

Part of the claimant's job involved intervening when clients were upset or disruptive. Physical restraint techniques may be required at times. On Monday, 19 June 2023, the day of the incident, the claimant described two staff members escorting a client, a 14 or 15 year old of 100 to 115 pounds and slender build, into the facility from outside with other clients. The client began to struggle against the staff as they neared the seclusion area. As the struggle moved to the floor, the claimant attempted to assist the other staff.

While the client was on his back on the floor, the claimant tried to help remove his shoes. “They have shoestrings or what have you that they can harm themselves. They could have something inside the shoes that they could use to harm themselves. So, we try to take care of that ahead of time, before taking them to seclusion.” [TR at 22.] The claimant testified that after getting the shoes off, she tripped over the client, with her left knee falling against him and her right knee on the floor beside him. She stated that she fell from a standing position. Her right upper torso was against the floor while she leaned over the client to continue assisting in his restraint. The claimant stated that her right shin and knee hit the floor, but she did not recall her right thigh hitting the floor. She stayed atop the claimant on the ground until he calmed down enough to move to the seclusion area.

After the client was escorted to the seclusion area, the claimant helped with serving lunch to the other clients. She recalled staying onsite past her usual shift’s end to assist with lunch, but then drove home without incident. She did not report an injury before leaving that day.

According to the claimant, her left knee felt stiff and sore the following day; but she did not observe any bruising or signs of an injury. She worked the next day (a Tuesday) without incident or complaint, noting, “I fell and I was supposed to be stiff or sore.” [TR at 38.] The claimant was not scheduled to work for the following few days. She recalled possibly taking some Tylenol around that time for soreness. The claimant testified that she spoke on the phone with coworker Ms. Sheila Glass on Thursday and complained to her about a burning pain in her thigh. The pain, she said, radiated from her groin down her thigh to her left knee and shin.

After a short break off the record, the claimant clarified that any testimony about her left side being injured or hurting was in error, and that she meant to reference her right side. When asked, “And so the testimony that you were giving, you, actually, referring

to the right side of your body, is that correct?” she answered, “Yes, sir.” [TR at 42.] The claimant then explained that she had difficulty getting out of bed for work that Friday. She denied any falls or injuries since the incident at work on Monday. The claimant stated that she used a heating pad on her thigh and knee while at work that Friday evening, but she did not make an injury report. She did the same on her shift the following evening.

The claimant returned to work again for a shift on Sunday evening. She described having some difficulty, but making it through her shift with help from a coworker. That Monday morning she recalled reporting that she sustained an injury on the previous Monday. She was directed to a Concentra clinic for evaluation (on 26 June 2023) and was returned to work that same day with some restrictions. The claimant followed up at Concentra on 29 June 2023. She stated that she was complaining of right knee and thigh pain at that visit. Dr. Scott Carle returned the claimant to work without restrictions that day, but ordered some physical therapy sessions. She did not attempt the physical therapy and denied in her testimony that she was able to return to work at the time.

According to the claimant, she should not have gone back to work because she did not believe that she could participate in physically restraining a client.

Q: Okay. So in other words, would you or were you in a position that if a similar thing had happened, where you had to get on the floor to be able to hold a child down or to, physically hold them, were you able to, physically, able to do that on June 29th of 2023?

A: No, sir.

Q: Okay. And is that part of the issue that you were having with regards to being able to comply with what Concentra – the doctor from Concentra was asking you to do?

A: That would be the main thing – reason that I couldn’t comply with that.

Q: Okay. All right.

A: And plus, that’s Youth Home policy as well.

Q: Okay. All right.

A: To be able to restrain.

Q: Okay. Now, did you—let's talk about that. Did you, physically, go back to work on the 29th?

A: No, sir.

[TR at 55-56.]

The claimant testified that she explained her disagreement with the physician's opinion to her employer and that she was offered light duty work, which she refused.

Q: But she was offering it?

A: She offered it.

Q: Okay. And did you take it?

A: And at the time I was like, "I'm in pain and what I needed to do is to rest," and I didn't feel like I could just sit there at the receptionist desk, that's the job that was—and to sit there and be in pain. I might as well sit at home in pain, that's what I'm thinking.

[TR at 58.]

According to the claimant, she sought a Change of Physician through the Commission and eventually saw a Dr. Moeller with St. Vincent on the 5th of July of 2023. She testified that he placed her on work restrictions and recommended physical therapy. The claimant testified that she eventually attempted the physical therapy "sometime later on." [TR at 64.]

The claimant further testified that she later saw a Dr. Nallur, whom she also thought she might have seen on the 5th of July and then again around July 19th. At this point in the testimony, the respondents' counsel offered that their file reflected the care with Concentra being initially authorized, but by the time the claimant sought a Change of Physician, her claim had been denied.

Ms. Wood: Judge, if I may. I've been able to look up in our file, Ms. Coleman did request a Change of Physician. While the claim may have been initially accepted, Concentra was authorized. It [the claim] was denied. By the time she made the request for a Change of Physician, that was denied by the Commission. I'm looking at a letter from Susan Isaac dated July 17th of '23 denying the Change of Physician.

Judge: Does that seem to clear it up on your end, Mr. Proctor—

Mr. Proctor: Yes.

Judge: -- as to what's happening when and where?

Mr. Proctor: Okay. Yes.

[TR at 67-68.]

Ms. Coleman then testified that whenever she did attempt to attend the physical therapy ordered by Dr. Nallur, coverage was denied. Around that time of 19 July 2023, the claimant was still not working. She recalled going to the Baptist Hospital emergency department on or about 24 July 2023. The claimant did not describe her course or treatment at the emergency department, but said that she followed up sometime afterwards with her primary care provider Dr. Rhodora Raghavan.

Q: Okay. All right. It looks—we have introduced records that would appear that, that would have been August the 23rd, of 2023? You've seen her for issues with our hip and right hip pain?

A: That could be correct. I mean, that's probably correct for the time.

[TR at 72-73.]

Dr. Raghavan referred the claimant to Associate Physical Therapy and to OrthoArkansas, where she saw Dr. Victor Vargas for right knee pain. After seeing Dr. Vargas on September 6th, the claimant returned to work at full duty without restrictions on 15 September 2023. She testified that she was still in physical therapy at the time of her return to work, explaining, "certain things I had not completed or worked on, like how to sit and how to get up, how to bend, how to squat, all that, but I was back at work." [TR at 74.]

The claimant confirmed that she had not worked between 26 June and 15 September 2023.

Despite her return to work, she explained:

Q: Are you still suffering from this injury to the point that it would require you to go to the doctor?

A: I still suffer from it.

Q: Have you been required or are you required to go or have there been—is there a requirement in your—for you to seek medical treatment as a result of the injuries that you're presenting?

A: Its' not a requirement if that's what you're saying.

...

Q: Okay. So as far as any further medical treatment, are you—I'm asking, do you believe that you're going to be in need of further medical treatment?

A: I got a feeling that I will, because I—I mean, I experience a lot of pain.

[TR at 75.]

On cross examination the claimant recalled her deposition testimony:

Q: ... "At any point since June 19th, have you either seen on your own or had a doctor tell you about a specific finding or visible sign of injury in your hip, leg, or knee?" Your response was, "No. No, sir." Is that accurate?

A: Sounds accurate.

Q: Do you have any doctor visits at all scheduled right now for your right leg?

A: No, ma'am.

Q: And you testified in your deposition that you had no treatment or testing that had been recommended that you have not received, is that right?

A: Yes, ma'am.

[TR at 82.]

The claimant stated that she currently takes over-the-counter medication as needed for pain and that she utilized accumulated paid leave during the time between presenting to Concentra on 26 June 2023 and then returning to work on 15 September 2023.

On re-direct examination the claimant confirmed that Dr. Nallur prescribed light duty at her 6 July 2023 visit.

Respondents' Witness Kelly Destefano, Former HR Officer at Youth Home

Ms. Destefano verified that she was the author of an email admitted into evidence by the respondents. [Resp. Ex. № 2 at 8.] She explained that she was in the process of changing employment while the claimant's matter was in process with the respondents, so she wrote the email to provide the claimant and an HR coworker with pertinent information and the then-current status of the claim. She explained that the claimant was included on the message "so that if I had missed anything she could call me." [TR at 90.] Ms. Destefano testified that the claimant did not relay any objection or correction to the state of things as described in the email.

According to Ms. Destefano, she spoke with Sheila Glass and Liz Larsen after the claimant's report of an injury. She asked each to relay what they recalled of the restraint incident and then documented their responses in her email. Ms. Stefano also stated that the claimant declined her offer of light-duty work. She further stated that she discussed with the claimant the process for seeking care beyond her initial authorized provider.

Q: Did you talk to her about authorized treatment?

A: What do you mean?

Q: Authorized versus unauthorized treatment.

A: Oh, yes, she told me that she was going to see a different doctor and I was concerned about that, because I knew that if workers' comp didn't authorize her to go to a different doctor that they wouldn't pay for it and referred her back to the workers' comp folks to get that worked out.

[TR at 91.]

On cross examination, Ms. Destefano noted a video of the incident and that while she had not seen the video, the claimant's supervisor had reviewed it and relayed to her that the claimant fell over on the floor from a crouched position.

Medical Evidence

The claimant's 26 June 2023 Concentra clinic visit with Physician Assistant Ellen Cupit noted the following diagnoses: Fall, initial encounter; Knee pain, right; Bursitis of hip, right. A follow-up was indicated for two days later, and she was returned to work that day with restrictions for sedentary work only. [Cl. Ex. No 1 at 1.]

The radiology reports from that day include the following:

X-Ray, Right knee, 3 views

Findings: There is no evidence of acute fracture, dislocation or osseous lesion. The femorotibial joint space is narrowed, medially. The adjacent soft tissues appear unremarkable, with no joint effusion.

Impression: no acute traumatic osseous abnormality.

...

X-Ray, Right Hip, unilat. with pelvis when performed, 2-3 views

Findings: There is no evidence of acute fracture, dislocation or osseous lesion. The hip joint space is preserved and the femoral head has a normal contour. The adjacent soft tissues appear unremarkable.

Impression: No acute traumatic osseous injury.

[Resp. Ex. No 1 at 1-2.]

The Form AR-N completed by the claimant on 27 June 2023 complained of "upper right thigh, knee, and right below the knee, all the right side, what I have noticed so far." [Resp. Ex. No 2 at 5.]

Her next Concentra appointment, according to the short-form Work Status Activity Report provided by the claimant, was on 29 June 2023 with Dr. Scott Carle. That visit was coded for: Knee pain, right; Lateral pain of right hip; Fall, initial encounter. Dr. Carle

released the claimant to return to work without restrictions that day and ordered three physical therapy appointments and another clinic follow-up. [Cl. Ex. № 1 at 2.] The long-form Transcription note from that visit provided the following:

10 days out from fall at work when trying to restrain patient. C/o some right knee and hip pain. Improved. No locking or giving way. Some right lateral hip pain with ambulation.

...

Morbidly obese

...

Normal gait. No tenderness or swelling of extremities. Range of motion is within normal limits. Normal muscle strength and tone.

Right Hip: No pain with passive rotation right hip joint. No limp.

Right Knee: No knee effusion. Full ROM.

Ligamentous Laxity Test(s): negative Anterior Drawer sign, negative Posterior Drawer sign, no laxity on valgus stress and no laxity on varus stress.

Meniscal Test(s): negative lateral McMurray test and negative medial McMurray test.

...

Functional Restoration and Status of Healing: Diana Coleman is at functional goal, not at end of healing.

Comments: Severe deconditioning pr[e]ceded case date.

...

NO MEDICATIONS WERE PRESCRIBED OR DISPENSED FOR THIS ENCOUNTER.

...

Activity Status and Restrictions

Treatment Status: Returning for follow-up 5 days

Activity Status: There are restrictions not related to this injury. The claimant can return to work with no restrictions on 06/29/2023.

[Resp. Ex. № 1 at 3-5.]

On 23 August 2023, Dr. Raghavan referred the claimant to physical therapy for thigh and hip pain. [*Id.* at 3-5.] Then, on 6 September 2023, Dr. Vargas referred the

claimant to physical therapy for right knee joint pain, indicating, “Note to provider: hamstring/thigh.” [*Id.* at 6.] Dr. Vargas wrote a note, also on 6 September 2023, for the claimant’s return to work at full duty without restrictions on 15 September 2023. [*Id.* at 7.]

IV. ADJUDICATION

The stipulated facts are outlined above and accepted as fact. It is settled that the Commission, with the benefit of being in the presence of the witnesses and observing their demeanor, determines a witness’ credibility and the appropriate weight to accord their statements. See *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 448, 990 S.W.2d 522 (1999).

A. THE CLAIMANT FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT SHE SUSTAINED A COMPENSABLE INJURY.

Under Arkansas’ Workers’ Compensation laws, a worker has the burden of proving by a preponderance of the evidence that she sustained a compensable injury as the result of a workplace incident. Ark. Code Ann. § 11-9-102(4)(E)(i). A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). Objective medical findings are those findings that cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i). Causation does not need to be established by objective findings when the objective medical evidence establishes that an injury exists and other nonmedical evidence shows that it is more likely than not that the injury was caused by an incident in the workplace. *Bean v. Reynolds Consumer Prods.*, 2022 Ark. App 276, 646 S.W.3d 655, 2022 Ark. App. LEXIS 276 (citing *Wal-Mart Stores, Inc. v. VanWagner, supra*).

The claimant alleges that her injury occurred by specific incident. The claimant must establish four (4) factors by a preponderance of the evidence to prove a specific incident injury: (1) that the injury arose during the course of employment; (2) that the

injury caused an actual harm that required medical attention; (3) that medical evidence, supported by objective findings, support the existence of the injury; and (4) that the injury was caused by a particular incident, identifiable in time and place. See *Cossey v. G. A. Thomas Racing Stable*, 2009 Ark. App. 666, 344 S.W.3d 684, 689.

The claimant failed to prove that she suffered a compensable injury under the Act. I find Dr. Carle's opinion to be credible. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002) (the Commission may accept or reject a medical opinion and determine its probative value). His examination revealed no objective signs of a compensable injury attributable to the restraint incident in the workplace. He does note, however, that the claimant is morbidly obese with "severe deconditioning" preceding and unrelated to the workplace incident. I interpret his statement, "There are restrictions not related to this injury," as acknowledging some physical limitations, consistent with those entered three days earlier by the PA, but making clear that those restrictions are not attributable to the workplace incident.

None of the other medical evidence submitted by the claimant (i.e., physical therapy referrals dated August 23rd and September 6th) makes any reference to a workplace injury or makes any note as to a mechanism of injury. Those records do not support a finding of a compensable injury. The claimant's unsupported and generally unspecific complaints of feeling pain, still today as she did in the days eventually following the incident, are not enough in the clear absence of substantiating medical evidence, to meet her burden of proof. Accordingly, her claim for a compensable injury must fail.

I do not find it of particular probative value to place concern on whether the claimant fell over from a standing position, which she claims, or from a kneeling position, as indicated in the record of her supervisor's contemporaneous review of the incident.

Regardless of how she came to be on the floor, I do not find it more likely than not that she suffered a compensable injury to her hip, thigh, or knee during the restraining incident.

The subsequent treatment the claimant may have received during the time she stayed off of work, of which the records are scant, is thus not the responsibility of the respondents.

B. BECAUSE THE CLAIMANT FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT SHE SUFFERED A COMPENSABLE INJURY, SHE IS NOT ENTITLED TO TTD BENEFITS.

A claimant must prove her entitlement to TTD benefits by a preponderance of the evidence. Ark. Code Ann. § 11-9-705(a)(3). Because the claimant failed to prove a compensable injury, her claim for TTD benefits must fail.

C. THE CLAIMANT FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT SHE IS ENTITLED TO AN ATTORNEY'S FEE.

Because the claimant failed to meet her burden on establishing a compensable injury, she is not entitled to an attorney's fee.

V. ORDER

Consistent with the Findings of Fact and Conclusions of Law stated above, this claim is denied and dismissed.

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE