

MISSISSIPPI WORKERS' COMPENSATION COMMISSION

MWCC NO. 1100374-K-7198-E

DANIEL F. SHOPE

CLAIMANT

VS.

AMS STAFF LEASING

EMPLOYER

AND

DALLAS NATIONAL INSURANCE COMPANY

CARRIER

Representing Claimant:

Roger K. Doolittle, Esquire, Jackson, MS

Representing Employer/Carrier:

Leland S. Smith, III, Esquire, Jackson, MS

FULL COMMISSION ORDER

This matter was considered on the record by the Full Commission on October 29, 2012 pursuant to the Petition for Review filed by the Employer/Carrier. In an Order issued on May 2, 2012, the Administrative Judge found that the Claimant sustained a compensable work-related injury on October 8, 2010. The Employer/Carrier contends that the Order of Administrative Judge is unsupported by and contrary to the evidence and the law. For the reasons stated below, we find that the Order of Administrative Judge dated May 2, 2012 is reversed, and we hereby find this claim is denied and dismissed.

I.

The Claimant alleges that on October 8, 2010 he sustained a compensable work-related injury to his left hand when he attempted to open a truck door. A hearing was held before the Administrative Judge on December 19, 2011 to determine the sole issue of whether or not a work-related injury occurred on or about the date alleged in the Petition to Controvert, October 8, 2010.

The Administrative Judge found that the Claimant met his burden of proof and established that he sustained a work-related injury to his left hand.

The medical evidence before the Commission in this matter is sparse. The Claimant first sought treatment at Minor Med Care for his alleged work injury on December 29, 2010, more than two months after his alleged date of injury. The Claimant reported that he had injured his left hand while pulling on a truck door, causing pain and swelling in his left hand. The Claimant was released to return to work with restrictions on December 29, 2010. The Claimant returned to Minor Med Care on January 17, 2011. At this visit, the Claimant was released to return to work at full capacity.

The Claimant relies heavily on the opinion of Dr. Sheila Lindley to support his position that his current left hand condition is a result of the alleged work-related injury he sustained to his left hand on October 8, 2010. We find, however, that Dr. Lindley's opinion is insufficient to support a finding that the Claimant's left hand condition is causally related to his alleged work-injury.

The Claimant has the general burden of proof to establish every essential element of his claim, and it is not sufficient to leave the matter to surmise, conjecture or speculation. *Narkeeta, Inc. v. McCoy*, 153 So. 2d 798, 800 (Miss. 1963). In *Cole v. Superior Coach Corp.*, 106 So. 2d 71, 72 (Miss. 1958), the Court stated, "[i]n all but the simple and routine cases (and this is not in that category), it is necessary to establish medical causation by expert testimony."

Dr. Lindley's report dated August 5, 2011 fails to address causation of the Claimant's alleged condition. Dr. Lindley's opinion fails to provide an opinion as to whether the Claimant's work caused the Claimant's left hand condition. Dr. Lindley's report merely states as part of her findings, "Probable traction injury to the median and ulnar nerves of the left upper extremity." (Claimant's Exhibit 3, p. 6). Dr. Lindley's report does not relate the Claimant's condition to his alleged work injury. Even if this statement by Dr. Lindley could be construed to support a finding of causation,

we find that Dr. Lindley's opinion is unreliable as it is based on inaccurate information provided by the Claimant.

The Claimant has shown a lack of credibility in numerous instances during the duration of his claim. Dr. Lindley's report is based on a medical history from the Claimant that is inconsistent with the evidence as a whole. The Supreme Court has held that "negative testimony concerning the cause of injury may be substantial evidence upon which a claim may be denied." *White v. Superior Products, Inc.*, 515 So.2d 924, 927 (Miss.1987); *See also Edwards v. Marshall Durbin Farms, Inc.*, 754 So.2d 556 (Miss. Ct. App. 2000) (holding that testimony in the record that the Claimant failed to supply his doctor with his full medical history was sufficient evidence to deny the claim). First, the report states, "[The Claimant] eventually went to Minor Med Care in Jackson, Mississippi after one month's time, and [Minor Med Care] took him off work from October 8, 2010 through December 15, 2010. [The Claimant] has not returned to work." (Claimant's Exhibit 3, p. 3). This information is simply incorrect. The Claimant was not taken off of work by Minor Med Care. The Claimant acknowledged that he continued working for the Employer until December 15, 2010, when he was fired for failing to show up for work. On December 29, 2010, the date of the Claimant's first visit, he was released to work with some restrictions. On January 17, 2011, the Claimant was released to work at full capacity.

Further, Dr. Lindley's report states that she had not reviewed the Claimant's records from Dr. Robert Ray Smith, the physician who performed the Claimant's previous carpal tunnel release surgeries on both of the his hands. Dr. Lindley found in her report that the Claimant's condition had been asymptomatic after his prior surgery until his date of injury. However, the Employer testified that since the Claimant began his employment in April of 2010, he has taken off work concerning his prior injury with a different employer, and this testimony contradicts Dr. Lindley's finding that

the Claimant's condition has been asymptomatic. Overall, Dr. Lindley's report fails to address the causation of the Claimant's left hand condition and contains significant discrepancies concerning his prior medical history.

Additionally, the Claimant's history with Dr. Michael Winkelmann, a treating physician in the specialty of physical medicine, calls into question the credibility of the Claimant. The Claimant had been treating with Dr. Winkelmann for a previous back injury for several years. The Claimant went to Dr. Winkelmann on November 3, 2010, less than one month after his alleged work injury. The Claimant failed to mention any condition concerning his hand. In fact, Dr. Winkelmann's report on November 3, 2010 stated that the Claimant "has overall been doing well and has not had any significant new problem." (Employer/Carrier Exhibit 6, p. 9). The Claimant attempts to explain this inconsistency by asserting that Dr. Winkelmann was his back doctor, only, and the Claimant would not have mentioned anything about his hand injury. However, on the Claimant's very next visit to Dr. Winkelmann on January 27, 2011, Dr. Winkelmann describes the Claimant's left hand injury and documents that the Claimant is waiting on a referral to an orthopedic surgeon. (Id. at p.8). The fact that the Claimant discusses his alleged hand injury on the very next visit certainly calls the Claimant's explanation in to question.

The medical evidence when taken as a whole simply fails to address the element of causation. "Medical evidence must prove not only the existence of a disability but also its causal connection to employment." *Howard Indus., Inc. v. Robinson*, 846 So. 2d 245, 259 (Miss. Ct. App. 2002). The Claimant has failed to meet his burden of proof to establish that his condition is causally connected to the alleged work-related injury. Due to the lack of medical evidence establishing a causal connection and the evidence as a whole, we find the Claimant has failed to demonstrate that this is

a compensable claim.

II.

The Claimant's credibility has been called in to question in almost every facet of this claim. Mr. Leon Ghetti, the Claimant's supervisor, testified that the Claimant first reported his injury on November 21, 2010 more than a month and a half after the alleged incident. Further, Mr. Ghetti testified that on the day the Claimant reported the injury, Mr. Ghetti went and checked the door handle of the truck. Mr. Ghetti did not observe any problems with the door handle. There is no evidence in the record to call into question Mr. Ghetti's credibility. The Claimant, however, has admitted on cross-examination that he is a convicted felon for the crimes of theft and possessing stolen goods.

Further, the Claimant failed to be forthcoming in discovery concerning his previous injuries and workers' compensation claims. The Employer/Carrier asked the Claimant the following interrogatory:

20. If you have filed any suit or made any claim, formally or informally, for damages or any sum of money whatsoever against any parties other than the defendant's in this workers' compensation case, please state the name and address of the party or parties against whom such suit was filed or claim made, and if pending in Court, give the name of the Court wherein the action is pending, the style of the case, and the cause number.

ANSWER: None

(Employer/Carrier's Motion to Dismiss, December 9, 2011, Exhibit A).

The Claimant in fact has three prior workers' compensation claims. A review of our database indicates that in one of those prior claims, *Daniel F. Shope v. Covenant Transport*, MWCC No. 9508446-F-4615, the Claimant was represented by his current attorney in the case *sub judice* who

signed the certificate of service on the “Claimant’s Responses to the First Set of Interrogatories Propounded by Employer/Carrier” which denied the existence of any prior claims as quoted above.

Where the claimant is the only eyewitness who supports the claim of accidental injury and the Commission with reason finds claimant’s testimony untrustworthy or incredible, the Commission has authority to reject it. *White v. Superior Products, Inc.*, 515 So. 2d 924, 927 (Miss. 1987). “As judge of the credibility of witnesses, the Commission has the authority to reject testimony in circumstances which demonstrate a lack of trustworthiness or that which is incredible.” *Edwards v. Marshall Durbin Farms, Inc.*, 754 So. 2d 556, 560 (Miss. Ct. App. 2000).

The Claimant has repeatedly demonstrated to the Commission that he lacks credibility and candor. As such we find that the evidence presented fails to establish that the Claimant has sustained a compensable work-related injury.

III.

Based on the evidence as a whole and the applicable law, the Commission finds that the Claimant has failed to establish that he sustained a compensable work-related injury. The medical evidence presented is sparse, and the Claimant fails to present any evidence that addresses causation. Dr. Lindley’s report is based on an inaccurate history from the Claimant which is inconsistent with the evidence as a whole. Further, Dr. Winkelmann’s records call into question the credibility of the Claimant’s version of events. In addition to the lack of medical evidence addressing causation, the inconsistencies in the evidence noted above lead us to conclude that the Claimant has failed to meet his burden of proof in this case.

Therefore, based on the evidence as a whole, we hereby find that the Order of Administrative Judge dated May 2, 2012 is reversed, and we hereby find this claim to be denied and dismissed.

SO ORDERED on JAN 02 2013

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COMMISSIONERS



ATTEST:

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Phyllis Clark, Commission Secretary

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