

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION IV

CA07-861

June 4, 2008

JANICE KEENE

APPELLANT

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [F502422]

V.

ARKANSAS DEPARTMENT OF
HEALTH & PUBLIC EMPLOYEE
CLAIMS DIVISION

APPELLEES

REVERSED & REMANDED

The Arkansas Workers' Compensation Commission found that appellant, Janice Keene, did not sustain her burden of proving a compensable injury by a preponderance of the evidence because "the record does not contain objective findings that establish a compensable injury." We reverse and remand for further proceedings consistent with this opinion.

In his opinion, the administrative law judge (ALJ) noted appellant's testimony that on January 20, 2005, she sustained an injury during her employment when, while cleaning a client's residence, she picked up the end of a table that held a television, and she "kind of bent over and hurt my back, and right away I knew I was hurt." A subsequent MRI showed "[s]pinal stenosis at L4-5 caused by mild anterolisthesis of L4 on 5, ligamentum

flavum hypertrophy, and facet hypertrophy at this level. No definite roo[t] impingement is visualized.” The ALJ found that this did not constitute an objective finding because one physician opined that the MRI findings were related to “degenerative changes.” A second physician, also noting that appellant had “severe spinal stenosis at L4-5, with spondylolisthesis,” concluded that “[b]ased on her history, given the fact that she did not have problems with her back prior to this injury at work, and based on the fact that she was not having any active treatments for any back problems prior to this, I can certainly say with a reasonable degree of medical certainty that her pain and the problem she is voicing today, and her reason for seeking medical treatment is certainly related to her work related accident that occurred on January 20, 2005.” The ALJ, however, noted that during her testimony on cross-examination, appellant remembered that she suffered from back pain in 2000 and strained her back in 2002. The ALJ concluded that he could not rely on the second physician’s analysis because the physician’s opinion was based on an incorrect history. The Commission adopted the ALJ’s opinion as its own.

On appeal, appellant in part urges that the Commission failed to recognize the objective findings of the MRI, and argues that the Commission “has not made sufficient findings of fact that would allow an analysis of the facts that the Commission believes are established by the evidence.” We agree.

A claimant must prove a causal connection between his employment and the injury. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000). Also, the workers’ compensation statutes provide that “[a] compensable injury must be established

by medical evidence supported by objective findings....” Ark. Code Ann. § 11-9-102(4)(D) (Supp. 2007). Further, “objective findings” are defined as “those findings which cannot come under the voluntary control of the patient.” Ark. Code Ann. § 11-9-102(16)(A)(i) (Supp. 2007).

Here, appellant presented an MRI showing spinal stenosis. This evidence 1) is medical evidence and 2) is supported by findings that cannot come under the control of the patient. Thus, the ALJ’s opinion is incorrect in stating that there were no objective findings. It appears that, in reaching the conclusion that there were no objective findings, the ALJ discredited the MRI by noting that one doctor related the findings to degenerative changes while the other doctor lacked appellant’s full history when he related the changes to an on-the-job injury. Thus, in analyzing the issue, the ALJ confused the concepts of “causal relationship” and “objective medical findings.” Specifically, while the ALJ couched his discussion in terms of a lack of objective medical findings, he actually considered whether there was a causal connection between what are clearly objective medical findings and appellant’s employment.

The two concepts—causation and objective findings—must be considered separately. In *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999), the Arkansas Supreme Court held that objective medical evidence was not essential to establish a causal relationship between the injury and the work-related accident. Here, the ALJ confused the two concepts, and incorrectly discounted what are clearly objective findings; he then compounded his error by failing to consider appellant’s own testimony,

which is non-medical, non-objective evidence that may also establish causation. Therefore, we cannot say that the Commission disposed of the case on a finding that there was no causation.

Accordingly, because the Commission erred in concluding that there were no objective findings, we reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded.

HART and BIRD, JJ., agree.