

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F512706**

<b>HAZEL "LYNN" FARROW, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>BRUCE KENNEDY SAND &amp; GRAVEL CO., EMPLOYER</b>	<b>RESPONDENT</b>
<b>BITUMINOUS CASUALTY CORPORATION, CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED OCTOBER 11, 2006**

Hearing before Administrative Law Judge J. Mark White on September 7, 2006, in Texarkana, Miller County, Arkansas.

Claimant represented by Mr. Garnet Norwood, Attorney at Law, Texarkana, Ark.

Respondents represented by Mr. Randy Murphy, Attorney at Law, Little Rock, Ark.

**STATEMENT OF THE CASE**

On September 7, 2006, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on June 19, 2006, and a Prehearing Order was entered that same day. A copy of the June 19, 2006, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee/employer/carrier relationship existed at all relevant times, including November 11, 2005; that the

claimant earned an average weekly wage of \$320, entitling her to a compensation rate of \$213 for total disability benefits and \$160 for permanent partial disability benefits; and that the respondents now controvert this claim in its entirety.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable injury; whether the claimant is entitled to temporary total disability benefits; and attorney's fees.

The claimant contends that she sustained a compensable injury on November 11, 2005; and that she is entitled to temporary total disability benefits from November 11, 2005 through a date yet to be determined.

The respondents contend that the claimant did not sustain a compensable injury within the course and scope of her employment; and that claimant is not entitled to benefits due to failure to see Dr. Knight as scheduled by respondents.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe her demeanor, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that the existence and extent of her alleged knee injury is established by medical evidence supported by objective findings.
4. The claimant has therefore failed to prove by a preponderance of the evidence that she sustained a compensable injury to her knees.
5. The claimant has failed to prove by a preponderance of the evidence that the existence and extent of her alleged left shoulder injury is established by medical evidence supported by objective findings.
6. The claimant has therefore failed to prove by a preponderance of the evidence that she sustained a compensable injury to her left shoulder.
7. The claimant has proven by a preponderance of the evidence that she sustained an injury to her right hip arising out of and in the course of her employment; that her right hip injury was caused by a specific incident identifiable by time and place of occurrence; that her right hip injury caused external physical harm to the body requiring medical services; and that the

existence and extent of her right hip injury is established by medical evidence supported by objective findings.

8. The claimant has therefore proven by a preponderance of the evidence that she sustained a compensable injury to her right hip.
9. The claimant has failed to prove by a preponderance of the evidence that she remained in her healing period after November 17, 2005.
10. The claimant has therefore failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits.
11. The respondents have controverted this claim in its entirety.

## **DISCUSSION**

### **I. History**

The claimant worked for the respondent-employer as a dump-truck driver. On November 11, 2005, she was involved in a motor vehicle accident when her dump truck was struck by a mobile home under transport. The claimant did not seek medical attention at that time. The accident occurred on a Friday, and by the following Monday, the claimant testified, she was too sore to work.

She initially went to the emergency room on November 15, complaining of bruising to her right hip/upper buttocks. She was diagnosed with a pelvic contusion,

released, and instructed to remain off work until November 19. On November 17, she sought treatment on her own from Dr. Roshan Sharma. Dr. Sharma diagnosed her with “significant multiple soft tissue injuries” and prescribed medication and physical therapy. He noted the claimant's history of fibromyalgia and arthritis which pre-existed the motor vehicle accident. Dr. Sharma treated continued to treat her with physical therapy over the following months.

Shortly after that first visit with Dr. Sharma, the respondents directed the claimant to another physician, Dr. Norris Knight. The claimant refused to see Dr. Knight, on the basis of Dr. Knight's reputation. The claimant and the respondents' adjuster attempted to negotiate an agreement to see some other doctor, but in the end the claimant saw no other doctor, and as a result no diagnostic testing was ever performed. The claimant's primary complaint is now her left shoulder.

## **II. Adjudication**

### **A. Compensability**

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. § 11-9-102 (4)(A)(i) must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that

the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the existence and extent of the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. *Id.*

The record identifies only a handful of objective findings of injury observed in the days and weeks after the claimant's motor vehicle accident. The claimant testified that she sustained no new injury to her neck and back, thus objective findings of injury to those areas will not be considered further herein.

### **Left Knee Injury**

Dr. Sharma observed crepitation in the left knee, but he diagnosed the claimant with only a soft-tissue injury to the left knee. Because no internal knee injury was diagnosed or treated by Dr. Sharma, it is doubtful, at best, that the crepitation was related to the motor vehicle accident. I find that the claimant has failed to prove by a preponderance of the evidence that the existence and extent of

her alleged knee injury is established by medical evidence supported by objective findings. I conclude that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her knees.

### **Left Shoulder Injury**

The claimant's primary complaint is with her left shoulder. She testified that she complained of shoulder pain immediately after the accident, but the emergency room records fail to document any such complaint. The only documented objective finding as to the left shoulder is a single mention by Dr. Sharma of slight muscle swelling, but it cannot be determined from the record whether this symptom was due to the motor vehicle accident, the claimant's pre-existing fibromyalgia, or something else. It is well established that speculation and conjecture can never take the place of proof. *Ark. Dept. of Correction v. Glover*, 35 Ark. App. 32, 812 S.W.2d 692 (1991).

Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that the existence and extent of her alleged left shoulder injury is established by medical evidence supported by objective findings. I conclude that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her left shoulder.

## **Right Hip Injury**

In contrast, there are multiple mentions in the medical record of the bruises observed on the claimant's right hip. The claimant credibly testified that she was initially unable to work in part because of her right hip pain.

Given the medical evidence and the claimant's testimony, I find that the claimant has proven by a preponderance of the evidence that she sustained an injury to her right hip arising out of and in the course of her employment; that her right hip injury was caused by a specific incident identifiable by time and place of occurrence; that her right hip injury caused external physical harm to the body requiring medical services; and that the existence and extent of her right hip injury is established by medical evidence supported by objective findings. I therefore conclude that the claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her right hip.

## **B. Indemnity Benefits**

An employee who suffers a compensable unscheduled injury is entitled to temporary total disability compensation for that period within the healing period in which she suffers a total incapacity to earn wages. *Arkansas State Highway & Transportation Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing

period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). To prove entitlement to indemnity benefits, the claimant must demonstrate that her disability lasted more than seven (7) days. Ark. Code Ann. § 11-9-501 (a)(1).

Though Dr. Sharma noted the claimant's right hip contusion, he made no treatment recommendation as to the right hip, and no treatment was ever provided for the right hip. Because treatment for the right hip was neither recommended nor provided, I cannot reasonably find that the claimant remained in her healing period for more than seven days.

I find that the claimant has failed to prove by a preponderance of the evidence that she remained in her healing period after November 17, 2005. I therefore conclude that the claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits.

#### **AWARD**

The claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her right hip. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and

conclusions of law set forth herein.

No indemnity benefits have been awarded herein. An attorney's fee may be awarded only on indemnity benefits owed and controverted. Ark. Code Ann. § 11-9-715. Therefore, no attorney's fees are awarded herein.

All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid pursuant to Ark. Code Ann. § 11-9-809.

**IT IS SO ORDERED.**

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**HON. J. MARK WHITE**  
Administrative Law Judge