

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F612037

PATRICIA D. HINTON, EMPLOYEE

CLAIMANT

**KIMBERLY-CLARK CORPORATION,
SELF-INSURED EMPLOYER**

RESPONDENT NO. 1

SECOND INJURY FUND

RESPONDENT NO. 2

OPINION FILED JUNE 17, 2008

Hearing before Administrative Law Judge O. Milton Fine II on March 19, 2008 in Conway, Faulkner County, Arkansas.

Claimant *pro se*.

Respondent represented by Mr. Jarrod Parrish, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 19, 2008, the above-captioned claim was heard in Conway, Arkansas. A pre-hearing conference took place on November 5, 2007. A prehearing order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

Stipulations

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit

1. They are the following:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/employer relationship existed on October 28, 2006.

3. At the time, the Claimant's average weekly wage of \$795.06 will entitle her to temporary total disability benefits in the amount of \$488 per week and permanent partial disability benefits in the amount of \$360 per week.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1.

They are the following:

1. Whether the Claimant sustained a compensable injury to her left hand and wrist on October 28, 2006.
2. Whether Claimant is entitled to temporary total disability benefits from October 29, 2006 to November 10, 2006.
3. Whether Claimant is entitled to an impairment rating to her left hand.

Contentions

Respondent No. 1 and Respondent No. 2 each added one contention at the hearing. The contentions now read:

Claimant:

1. The Claimant contends that she sustained a compensable injury on October 28, 2006, and is entitled to all related benefits, including temporary total disability and permanent partial disability.

Respondent No. 1:

1. Respondent No. 1 contends that the Claimant did not suffer a compensable injury on or about October 28, 2006. Even if compensability is established, however, the medical evidence does not support a finding that Claimant is entitled to temporary total disability benefits.

2. Respondent No. 1 contends the Claimant was not performing employment related services at the time of her injury.
3. Respondent No. 1 controverts Claimant's entitlement to an impairment rating for her left hand.

Respondent No. 2:

1. The Second Injury Fund should not have been made a party to a proceeding involving a scheduled injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2002):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant's Proffered Exhibit 2 should be admitted into evidence.
4. Claimant has not proven by a preponderance of the evidence that she sustained a compensable injury on October 28, 2006.
5. The balance of the issues are moot in light of the above finding.

PRELIMINARY RULING

Admissibility of Claimant's Proffered Exhibit 2

At the hearing, Claimant moved for the admission of what had been pre-marked as Claimant's Exhibit 2, a one-page printout dealing with the disposition of State of Arkansas v. Patricia Diane Hinton, Pulaski County Circuit Court No. CR 94-246. The document reflects that the case was comprised of two counts of theft by receiving. Respondent No. 1 objected on the grounds that it was not provided to counsel at least seven days prior to the hearing. Respondent No. 2 offered no objection. Claimant countered that she was offering the document to explain the disposition of the charge referred to in Respondent No. 1 Exhibit 2. Counsel for Respondent No. 1 countered that the arrest record was being offered to address Claimant's credibility.

In addressing the exchange of exhibits, the prehearing order reads:

Exhibits and the identity of witnesses must be exchanged at least seven (7) days prior to the hearing . . . Evidence not disclosed in compliance with this Order shall not be considered as evidence unless prior permission of the Commission is obtained and for good cause shown.

Claimant did not comply with the prehearing order by providing this exhibit to Respondent No. 1 at least seven days before the hearing. However, per the order, it remains within my discretion whether to admit an exhibit that is violative of this provision. Because this is not a medical record, Ark. Code Ann. § 11-9-705(c)(2)(A) is not implicated. Instead, consideration of the exhibit is covered by §11-9-705(a)(1):

In making an investigation or inquiry or conducting a hearing, the Workers' Compensation Commission shall not be bound by technical or statutory rules of evidence or by technical or statutory rules of procedure, except as provided by this chapter, but may make such investigation or inquiry, or conduct the hearing, in a manner that will best ascertain the rights of the parties.

Based upon my review of the proffered exhibit, it should be admitted into evidence. Respondent No. 1 has offered evidence of her arrest for theft of property to show that she lacks credibility. Evidence that Claimant was not convicted of those offenses should be admitted as well not only because fair play demands it, but to ensure that consideration of this matter enables me to best ascertain the rights of the parties. Hence, Claimant's Proffered Exhibit 2 shall be admitted into evidence.

CASE IN CHIEF

Summary of Evidence

The witnesses at the hearing were Claimant, Bobby Atkins, Barry Knoerr, and Mike Woole. In addition to the prehearing order discussed above, also admitted into evidence in this case were Respondent's Exhibit 1, Claimant's medical records, consisting of 11 pages; Claimant's Exhibit 2, a computer printout concerning Pulaski County Circuit Court No. CR 94-246; Claimant's Exhibit 3, a printout of her Cingular telephone bill from October 19 2006 to November 18, 2006; Respondent No. 1 Exhibit 1, a compilation of Claimant's medical records, consisting of one index page and 19 numbered pages thereafter; and Respondent No. 1 Exhibit 2, non-medical documents including a Little Rock Police Department burglary report, three pages of photographs of the accident site, a Form AR-N, and an anonymous letter, consisting of one index page and ten numbered pages thereafter.

PRELIMINARY RULINGS**Admissibility of Claimant's Proffered Exhibit 2**

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Because of its relation to the documents in Respondent No. 1 Exhibit 2, I find that Claimant's Proffered Exhibit 2 should be admitted into evidence.

Testimony

Patricia Hinton. Under questioning from me, Claimant testified that she is 39 and has worked for Respondent Kimberly-Clark since September 1999. She is a technician there. On October 28, 2006 she injured her knees, her left wrist, and a finger. Claimant described the incident as follows:

I left to go to the bathroom and in the process of coming out of the bathroom I was washing my hands, and I had put my hands up under and I noticed I heard something leaking. And so I moved my hands—because you've got that automatic washer. So I put my hand back up under it to see what it was, and I heard some water leaking. And then I noticed the water was leaking. I looked down to see where it was leaking at, because I'm on the safety committee . . . [a]nd so I was checking to see what the problem was or whatever, see where the water was coming from. So I looked up under there and then I finally saw the water was—it was—there was a clamp. The drain pipe and the pipe was loose or whatever. And so I thought it was just barely just loose so I grabbed it and I just barely lifted up on it, and the water line—all I know is next the water line had broke and had hit me on my leg and had knocked me down. That's when I fell forward. And I guess I cut my hand on—I don't know really what I cut my hand on, but I know the sink broke, so I'm assume it was something on the sink that I cut my hand on.

She clarified that this happened in the restroom for female employees at the plant—the one she normally used during the course of her job. At about ten minutes before her job duties were to rotate, she asked to leave and use the restroom. She was not on break, but testified that employees are allowed to use the restroom while working. Claimant stated that she was in there to attend to personal business, and not to inspect the plumbing.

Claimant first stated that the water came from the drain pipe, but later said it was from the water supply line. She first testified that the water that struck her was room temperature, and then she said it was cold. Claimant maintained that the high pressure

of the water shooting out from the wall and striking her left knee was what caused her to fall—she did not fall because she slipped on the water. At the time she was checking the pipe, she was bent at the waist and knees. She was facing the sink at the time of the incident; when she fell, she went forward and to the right. Her left side struck the ground.

Claimant's testimony continued to evolve during the course of the examination. The following exchange is a prime example:

Q. Okay. Did you hit the sink or did you hit the wall?

A. I don't really remember exactly what I hit. But I know I went down at the sink. I think I hit the sink. I mean, I know I hit the sink. But as far as the wall part, I don't remember hitting the wall part.

Q. Okay. What part of your body hit the sink?

A. I'm assume my hand, my left hand.

Q. Wall, let's not assume. Let's—

A. My left hand.

Claimant ascribed the fuzziness of her testimony to the amount of time that has elapsed since the incident. She stated that she hit her knee and elbow as well, and that while she bumped her head, she did not lose consciousness. Interestingly, she stated that while she fell forward, she struck the back and not the front of her head. When asked to explain how that was possible, she surmised that she must have fallen again and struck the wall of the bathroom stall during her efforts to rise. She stated that the force of the water striking her made it difficult to get up. Claimant estimated that she was on the ground “about two or three minutes, maybe five minutes.” But again, she denied losing consciousness. Despite this extended period of time on the wet floor with water spewing at high pressure, only her left side was wet. After finally getting up, she grabbed some tissue to place on a cut just

below the pinky of her left hand. At the hearing, she displayed a faint scar on the palm of her left hand.

After leaving the bathroom, according to Claimant, she informed Angela Stobaugh what had occurred. The first response unit of the plant came and investigated. She was taken to the nurse's station. The emergency response team at the plant came up and checked her out. Bobby Atkins, the plant nurse, instructed the unit to summon an ambulance. She was taken to the emergency room at Conway Regional Hospital, where stitches—five on the outside and ten on the inside—were placed in her hand. Her wrist has hurt her since the accident, and she has received anti-inflammatories for it after it was x-rayed. However, because she did not recall striking it when she fell, she believe the jar of striking her hand caused it to be injured. She did not receive treatment for her elbow, but it was x-rayed as well. The x-rays took place on a later visit.

With respect to her claim for temporary total disability benefits, Claimant stated that she was off work from October 28, 2006 to November 10, 2006 because she became sick from being exposed to the cold air in wet clothing, developing a sore throat and congestion. Her time off was not because of the cut on her hand. She stated that the other witnesses at the hearing should be able to confirm that she was wet and had a bleeding hand.

She testified that she has received an impairment rating on her hand, and that is in the medical records in evidence.

When questioned by Respondent No. 1, Claimant stated that no one was in the bathroom at the time she fell. The sink was automatic one, which turns on when the user places her hands under it. She reiterated that she barely touched the pipe before water erupted. Claimant denied that she was sitting or leaning on the sink in any way. After

giving inconsistent testimony as to what she did after getting up, she stated that she went into two different stalls to retrieve tissue. She stated that she went to the stalls and not to the towel dispenser, which was to the right of the sink, because the water was coming out so hard.

With respect to the allegation that Claimant was sitting on the sink and using her cell phone at the time the incident occurred, she testified that the phone was in her jacket pocket in the break room. She admitted that she used the phone at the emergency room to call her boyfriend, but explained this by stating that her supervisor, Lee Tyus, retrieved her jacket and bag for her. Claimant also admitted that she used her phone in the past in the bathroom at the plant. She is allowed to use her phone outside on plant grounds "as long as it's in front of the triple doors."

Claimant admitted that she is not a mechanic at the plant, and that it was not her job to fix the sink. She also stated that she did not develop sickness until two or three days after the incident. While she is assuming the two are related because she was wet and the air temperature was 30 to 40 degrees, she was unsure if her records reflect that this was the cause of her illness. She reiterated that the illness was the basis for her being off work; she was placed on modified duty, with instructions not to use her left hand, and Respondent Kimberly-Clark accommodated this. She is currently back at full duty.

With regard to her impairment rating, Claimant testified that the physical therapist who conducted her functional capacity evaluation gave the rating. She injured her left wrist in the late 1990's by falling off a porch.

Because her claim was denied, Claimant has paid for some of her treatment through per private health insurance. She has paid the co-pays. She also stated that she drew some short-term disability benefits.

When questioned by Respondent No. 2, she testified that her previous workers' compensation claim involved her right hand. It was not reinjured, and is not bothering her. She had a previous slip-and-fall case at Barton Coliseum that concerned her back; but the claim at issue does not involve her back, and she is receiving no treatment for her back. Presently, she is back to work full time, at full duty, at the same job as before the incident. She is making more money now. Her only current problem is that her finger sometimes becomes numb.

Under further questioning from me, Claimant stated that the photographs in Respondent No. 1 Exhibit 2 depict the condition of the bathroom after she fell. She stated that she did not recall the sink falling, but observed it to be broken when she got up. Claimant believed that she cut her hand on the pipe coming out of the wall, but added that she does not know for sure.

In looking at the photographs, she stated that she struck her head on the stall wall to the left of the sink. She explained how she believes this occurred: "I'm thinking I did, because I was between the—okay. After I fell, I tried to get up because right where the water was shooting out straight to the back of the wall. I was between the water line and the stall wall." She stated that she knew she was bleeding because she saw a spot of blood on the wall opposite the sink—which the spraying water was striking.

With respect to the alleged numbness in her hand, she testified that it goes from the crease in her palm below her pinky to the tip of that finger. Because she is right-handed, the condition has not prevented her from writing or performing similar tasks.

Bobby Atkins. Called by Respondent No. 1, Atkins testified that he is the occupational health nurse consultant for Respondent Kimberly-Clark. He has worked in that capacity for 17 years. In the course of that job, he has dealt with Claimant regarding the claim at hand. He was not at the plant at the time of the incident, but was contacted at home about 2:00 a.m. that morning. Atkins related from his notes that he called Claimant at 10:00 a.m. the same morning. She told him that she had taken two pain pills and because it was warmer in the bathroom than where she had been working, she fainted. The notes of the conversation were recorded two days after the conversation, on Monday. Claimant later retracted the statement. She later told Atkins that she had gone to use the restroom and while washing her hands, heard water running. Claimant attempted to slide a pipe and the next thing she knew, she was on the floor, wet and cut.

He stated that after Claimant's initial injury, Dr. Meador released her to return to transitional duty. She returned in that capacity for awhile, and is working full duty now, with no restrictions or modifications. Kimberly-Clark accommodated her restrictions during her period of transitional duty. Initially, she reported to Atkins that she had a sinus infection. He instructed her that if she felt that bad, she did not need to come to work because she could be contagious. Atkins testified that Claimant told him that her illness had nothing to do with her left hand.

Under questioning from me, Atkins stated that the notes he referred to were prepared as part of his job duties. He had little recollection, apart from the notes, of the

conversation where she gave the second version of what occurred. Atkins recalled that it occurred in a face-to-face meeting. She came to him daily to change her dressings and check her sutures. This conversation occurred the Monday after the injury, October 30.

He testified that while the entire plant is kept at around 68 degrees, the machines themselves can be warmer than that. Shown the photographs in Respondent No. 1 Exhibit 1, he stated that he did not know who took them. He was of the opinion that someone on the accident investigation team took them, since they were taken before the bathroom was cleaned up.

As for her sinus infection, he observed her to have symptoms of nasal congestion. He did not treat the condition, but advised her not to come in and be around other workers. Her cut was on the Palmer's crease of her left hand, straight, and was about one and three-quarters inches in length. She had ten external stitches. No sign of infection was ever present, and the wound did not drain. Kimberly-Clark has an infection protocol to keep someone with a wound from contaminating the company's products. Nitrile gloves are used. Atkins was of the opinion that had Claimant not presented with a sinus infection and only had the cut, she could have performed her job from an infection-control standpoint.

At Claimant's request, I asked Atkins questions on her behalf. He did not believe she was asleep when he called her because she sounded coherent.

Barry Knoerr. Called by Respondent No. 1, Knoerr testified that he is a mechanic and a member of the emergency response team at Kimberly-Clark. He responded to the emergency call to aid Claimant concerning the incident at issue. Knoerr went into the bathroom and observed blood in the sink area and a few drops on the door to one of the

stalls. The right side of the sink was broken. He stated that there had been no maintenance issues involving that sink. An employee who encounters a sink problem is to call maintenance; being a member of the safety or emergency response team did not authorize a member to undertake sink repair.

At the hearing, he stated that he did not recall overhearing Claimant telling medics how she was injured.

When questioned by me, Knoerr stated that he did not take the photographs in Respondent No. 1 Exhibit 2. He could not recall if the photographs depicted the bathroom as he saw it, since it was cleaned of blood. The broken sink was the only one in the bathroom. He saw no trail of blood from the sink to the stall.

Mike Woole. Called by Respondent No. 1, Woole testified that he is a mechanic at Kimberly-Clark and serves on the emergency response team there. He responded to the October 28, 2006 incident at issue. Claimant related that her fall occurred because she had slipped on water that had gotten on the floor, and that she tried to grab to catch the sink but it broke off. She did not tell him that she had been attempting to repair a pipe underneath the sink. Woole stated that such a job would be for maintenance to handle.

Woole testified that he participated in the cleaning of the bathroom after the incident. However, any blood had already been cleaned by the time he arrived. He did observe that bleach had been used on the wall of the first stall and on the outside of the stall next to the sink.

In observing the sink area, Woole saw that the bracket to which the sink had been attached was still fairly intact. The right side of the sink was broken. He was unable to state whether Claimant's version of events as she recounted in the hearing was accurate.

When questioned by me, Woole stated that he did not know who took the photographs in Respondent No. 1 Exhibit 2. He was able to identify the bathroom depicted in them as the one in which Claimant fell because of the location of the towel dispenser/trash can. No other restroom—men’s or women’s—has that particular configuration. He testified that the condition of the restroom as shown in the photographs was as he saw it. The maintenance crew on the next shift would have cleaned up the mess.

Claimant told him that she did not know what had cut her hand, that it maybe had been the sink or a piece of a metal. She related that she had bumped her head, but Woole did not observe any sign of trauma in that area. She did not mention that water had struck her leg.

Under further questioning from Respondent No. 1, Woole stated that the sink bracket was not as bent as he expected. He stated that “[i]t—it seemed like the sink almost to have been picked up or, you know, raised up somehow or something shifted in an upward motion for it to have come [sic] off the hanger.” The bathroom incident occurred around 1:00 a.m. to 1:20 a.m.

Patricia Hinton. Recalled at her request, Claimant stated that she did not remember telling Atkins that she had taken two pain pills and fainted in the bathroom. However, she had taken two pain pills after leaving the emergency room following the accident. She did not take any pain pills prior to the incident. She did not recall telling him that she fainted.

Under questioning by Respondent No. 1, she denied speaking to Atkins about the temperature in the bathroom versus the temperature on the line. She agreed that the bathroom depicted in the photographs looks like the one in which she fell.

Records

Claimant's Exhibit 1. According to this document, Claimant underwent a functional capacity evaluation on March 14, 2007. Claimant presented cooperative behavior and demonstrated the ability to fully perform Light work and Medium Work up to 30 pounds floor to waist, 25 pounds waist to crown, and 35 pounds front carry.

Claimant's Exhibit 2. The printout of the case State of Arkansas v. Patricia Diane Hinton, Pulaski County Circuit Court No. CR 94-246, reflects that she was charged with two counts of theft by receiving on January 28, 1994. The trial ended in a hung jury and a mistrial on August 24, 1994, and on March 8, 2001, the charges were dismissed.

Claimant's Exhibit 3. This exhibit is a Cingular cell phone bill for Claimant for the telephone number 501-269-0302. It does not reflect that Claimant received or initiated any calls around 1:00 a.m. October 28, 2006, the approximate time of the alleged incident.

Respondent No. 1 Exhibit 1. The medical records of Claimant in this exhibit reflects that Claimant presented with left wrist pain on August 19, 1998 and underwent a bone scan. This revealed diffuse increased uptake in the left wrist attributed to hyperemia from recent immobilization. In addition, a more intense uptake was present in the region of the hamate but no correlating radiographic abnormality was visible. Another scan was performed on December 11, 1998, but no significant changes were noted. Claimant presented and was diagnosed with a bone lesion to the left wrist on December 23, 1998. She stated that she fell backwards onto her hand. A CT scan of the wrist on the same date showed some very minimal subchondral cyst formation in the capitate and lunate bones. No evidence of a healing or healed fracture was identified.

Respondent No. 1 has also included medical records related to right hand, wrist and arm pain Claimant had on August 1, 2006. However, since she is not currently alleging an injury to any of these areas, these records are irrelevant.

On November 1, 2006, Claimant presented to Dr. Lander Smith with head congestion and drainage, along with coughing. Her throat was noted to have purulent post-nasal drip, and she was assessed as having sinus congestion. She was still coughing and having sinus drainage when she returned on November 6, 2006. Claimant presented with hoarseness also.

Respondent No. 1 Exhibit 2. Respondent No. 1 has included records of a burglary investigation by the Little Rock Police Department in 1992. These reflect that Claimant was charged with theft by receiving on March 21, 1993.

Pages 6, 7 and 8 of the exhibit are the photographs that are referred to in the testimony above. Page 6 depicts a bathroom sink with its right side broken, laying on a tile floor. A wall-mounted towel dispenser/trash can is seen to the right. Page 7 is a close-up of the broken sink and dispenser/trash can. Page 8 is a close-up of the sink bracket on the wall. Each photograph bears the digital notation "28 1:26 AM."

The Form AR-N dated October 28, 2006 details that Claimant suffered injuries to her left hand, elbow, head and knee as a result of the following incident: "Water line in women's bathroom by [illegible] broke. Patricia went to try to replace the pipe and slip [sic] and fell from the force of the water. Hitting head, left elbow, knee and cutting left hand.

The final document in this exhibit is what Respondent No. 1 identifies as an anonymous letter from a co-worker. It reads in pertinent part:

Jean

Pat was in the bathroom talking on her cell-phone leaning on the sink, WE ARE Having way to many accidents out here.

This note was not addressed at the hearing. Neither "Jean" nor "Pat" are identified, let alone the author. It is undated, and does not have enough specificity to enable me to determine that the incident at issue is the subject without resorting to speculation and conjecture. The document will thus not be given any weight.

ADJUDICATION

A. Compensability

Claimant has alleged that she incurred compensable injuries to her left elbow, wrist and hand on October 28, 2006, when she fell in the bathroom at Respondent Kimberly-Clark. She also alleges that as a result of her clothing getting wet from the fall, she developed a sinus infection. Respondent No. 1 asserts that no compensable injury occurred.

Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2002), which the I find applies to the analysis of Claimant's alleged injuries, defines "compensable injury":

(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 be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2002). "Objective findings" are those findings that cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16). The element "arising out of . . . [the] employment" relates to the causal connection between the claimant's injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App.

143, 729 S.W.2d 430 (1987). An injury arises out of a claimant's employment "when a causal connection between work conditions and the injury is apparent to the rational mind." *Id.* A causal relationship may be established between an employment-related incident and a subsequent physical injury based on the evidence that the injury manifested itself within a reasonable period of time following the incident, so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. *Hall v. Pittman Construction Co.*, 234 Ark. 104, 357 S.W.2d 263 (1962).

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). This standard 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)(citing *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947)).

The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, 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 that it deems worthy of belief. *Id.*

There are no objective findings in the medical evidence of any elbow, wrist or hand injury. I recognize that Atkins, Knoerr and Woole, called by Kimberly-Clark, corroborated her testimony that she cut her left hand. But objective findings are not present here as they

are required to be—not in the medical records offered by either party. See *Swift-Eckrich, Inc. v. Brock*, 63 Ark. App. 118, 975 S.W.2d 857 (1998). Hence, there is no medical evidence supported by objective findings showing that she suffered these injuries. She has not met her burden of proof.

As for her sinus drainage, she sought treatment for it on November 1, 2006—three days after the alleged fall. There are objective findings in the record of purulent drainage in Claimant’s throat. But the records are devoid of anything linking this to Claimant’s clothing getting wet. Without more, I cannot causally link the two without resorting to speculation and conjecture, which I am not permitted to do. Speculation and conjecture cannot serve as a substitute for proof. *Dena Construction Co. v. Herndon*, 264 Ark. 791, 796, 575 S.W.2d 155 (1979). Hence, this is likewise not compensable.

Based on the above findings, it is not necessary to delve further into the elements of compensability. The claim must fail at the outset.

B. Balance of Issues

Because of the above finding, the other issues litigated at the hearing— whether Claimant is entitled to reasonable and necessary medical treatment, temporary total disability benefits, and an impairment rating—are moot and will not be addressed.

CONCLUSION

Claimant bears the burden of proving by a preponderance of the evidence that her alleged injuries are compensable. She did not do this. Therefore, her claim must be, and hereby is, denied and dismissed.

IT IS SO ORDERED.

Hon. O. Milton Fine II
Administrative Law Judge