

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F205613

GEORGE RANDY BUSH,
EMPLOYEE

CLAIMANT

WASHINGTON MEDICAL CENTER,
EMPLOYER

RESPONDENT

CANNON COCHRAN,
THIRD PARTY ADMINISTRATOR

RESPONDENT

OPINION FILED AUGUST 7, 2003

Upon review before the FULL COMMISSION in Little Rock,
Pulaski County, Arkansas.

Claimant represented by HONORABLE MARK VELASQUEZ, Attorney
at Law, Fayetteville, Arkansas.

Respondents represented by HONORABLE TOD BASSETT, Attorney
at Law, Fayetteville, Arkansas.

Decision of the Administrative Law Judge: Affirmed and
adopted.

OPINION AND ORDER

The respondents appeal from a decision of the
Administrative Law Judge filed February 14, 2003. The
Administrative Law Judge entered the following findings of
fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission
has jurisdiction of this claim.
2. On March 1, 2002, the relationship of
employee-self insured employer existed
between the parties.
3. On March 1, 2002, the claimant earned wages
sufficient to entitle him to weekly

compensation benefits of \$425.00 for total disability and \$319.00 for permanent partial disability.

4. On March 1, 2002, the claimant sustained a compensable injury to his left shoulder, in the form of a complete or full thickness tear of his left rotator cuff. Specifically, the claimant has proven by the medical evidence, supported by objective findings, the actual existence of this physical injury. He has further proven by the greater weight of the credible evidence that this physical injury arose out of and occurred in the course of his employment with the respondent, was caused by a specific employment related incident, is identifiable by time and place of occurrence, caused internal physical harm to this portion of his body, required medical services, and resulted in disability.
5. The medical services provided the claimant for his left shoulder difficulties after March 1, 2002, by and at the direction of personnel at the Arkansas Occupational Health Clinic and by and at the direction of Dr. John Park constitutes reasonably necessary medical services for the claimant's compensable injury. Pursuant to Ark. Code Ann. § 11-9-508, the expense of such services is the liability of the respondent herein, subject to the medical fee schedule established by this Commission.
6. The claimant was rendered temporarily totally disabled as the result of the effects of this compensable injury from June 19, 2002 through July 2, 2002 and beginning again on August 16, 2002 and continuing through a date yet to be determined. Specifically, the claimant has proven that during these periods he continued in his healing periods from the effects of his compensable injury and was rendered totally disabled from performing all

gainful employment for which he was otherwise qualified by this compensable injury.

7. The respondent has denied the occurrence of any compensable injury to the claimant's left shoulder and have controverted this claim in its entirety.
8. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on the indemnity benefits herein awarded to the claimant.

We have carefully conducted a de novo review of the entire record herein, and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct, and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's

decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

For prevailing on this appeal before the Full Commission, the claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715 (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner Yates dissents.

DISSENTING OPINION

I respectfully dissent from the majority's opinion finding that the claimant sustained a compensable injury to his left shoulder on March 1, 2002. Based upon my de novo review of the record, I find that the claimant has failed to meet his burden of proof.

The claimant alleged that he was injured on March 1, 2002, as he and another co-worker were moving a patient. He stated that they were attempting to move a patient back to a cart from the x-ray table when the cart brakes failed. The claimant contended that the jerking motion on his arms caused pain as he kept the patient from falling. The

claimant failed to notify his supervisor that day of the incident. However, on March 4, 2002, the claimant did notify his immediate supervisor of this alleged injury.

The claimant contended that his prior shoulder problems were not related to the alleged incident on March 1, 2002. The claimant contends that his shoulder was fully healed and functional following the last 11 years without prior complaints. However, the medical evidence demonstrates that the claimant was having problems since 1991. The medical records indicate that the claimant had "numerous falls from telephone poles onto his shoulders" by working in the cable industry. Further, the medical evidence demonstrates that the claimant sought treatment for problems with his shoulder in November of 2001. The claimant was prescribed Vioxx and Ultram by Dr. Park.

When the claimant sought treatment from Dr. Park in November of 2001, Dr. Park at that time indicated that the claimant would have to have surgery. However, the claimant opted for a cortisone shot, which clearly did not solve all the claimant's problems.

Dr. Park's opinion that the claimant's work at the hospital caused his rotator cuff tear is based upon conjecture and speculation and the history he obtained from

the claimant. Conjecture and speculation, even if plausible, cannot take the place of proof. Ark. Dept. of Correction v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991). Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1970). Arkansas Methodist Hospital v. Adams, 43 Ark. App. 1, 858 S.W.2d 125 (1993). A medical opinion based solely upon claimant's history and own subjective belief that a medical condition is related to a compensable injury is not a substitute for credible evidence. Brewer v. Paragould Housing Authority, Full Commission Opinion filed Jan. 22, 1996 (E417617). The commission is not bound by a doctor's opinion which is based largely on facts related to him by claimant where there is no sufficient independent knowledge upon which to corroborate claimant's claim. Roberts v. Leo-Levi Hospital, 8 Ark. App. 184, 649 S.W.2d 402 (1983). In short, Dr. Park has absolutely no concrete facts upon which to base his opinion that the rotator cuff tear occurred at the time of the alleged incident on March 1, 2002. Dr. Park's opinion is only as accurate as the information and history he received from the claimant. The claimant did not present any witnesses to corroborate his story. The burden of proof is on the claimant to prove his case.

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Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority's opinion.

JOE E. YATES, Commissioner