

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F105051

MARY FORBES, EMPLOYEE	CLAIMANT
CONAGRA FROZEN FOODS, SELF-INSURED EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES, THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED AUGUST 8, 2003

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

Claimant represented by HONORABLE LAURA MCKINNON, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE WILLIAM F. SMITH, Attorney at Law, Russellville, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed December 12, 2002.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties and set forth above are hereby accepted as fact.
3. I find that the claimant failed to prove by a preponderance of the evidence that she sustained an injury arising out of and in the course of her employment.

4. I find that the claimant also failed to prove that she is entitled to any additional temporary total disability compensation.

5. I find that the claimant failed to prove by a preponderance of the evidence that she is entitled to any compensation for a permanent physical impairment to her right shoulder.

6. I find that a preponderance of the evidence establishes that the claimant sustained a 20% permanent physical impairment to her left extremity.

7. The respondents are entitled to a credit for disability benefits paid to the claimant under a group disability benefit plan.

8. The respondents controverted any disability for benefits for a right shoulder injury and for any permanent physical impairment to her left lower extremity in excess of the 20% they have accepted.

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.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

JOE E. YATES, Commissioner

Commissioner Turner concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

I must respectfully concur in part and dissent in part from the majority opinion, which in all respects affirms and adopts the decision of the Administrative Law Judge. Specifically, I concur in the finding of the Administrative Law Judge that the claimant sustained a 20% permanent physical impairment to her left extremity. However, from all other aspects of the majority opinion, I respectfully dissent.

The Administrative Law Judge found that claimant failed to prove a compensable injury to her right shoulder for two basic reasons: (1) the claimant's medical records do not mention shoulder problems until January 2001; and (2) witness Mary Noyce testified that she did not see claimant strike anything as she fell.

In regard to the fact that claimant's medical records do not mention right shoulder problems until months

after September 6, 2000, the claimant's un-rebutted testimony was that she was not treated by Dr. Brown for her shoulder injury because the respondent employer told her they would not pay for the shoulder. Claimant testified that she reported shoulder pain from the September 6, 2000 incident approximately four days later, but that she was told it would not be covered due to failure to immediately report shoulder pain. *T. at 18.* In light of claimant's un-rebutted testimony on this issue, I do not find the fact that Dr. Brown's medical records make no mention of shoulder problems to in any way indicate that claimant did not in fact experience a shoulder injury on September 6, 2000.

As to Ms. Noyce's testimony, I do not find that it contradicts claimant's testimony that she struck her arm on either a trash cart or a sink as she fell. *T. at 16-17.* Ms. Noyce did indeed testify that she did not see claimant strike either a trash cart or a sink when she fell. *T. at 47.* However, later in her testimony, Ms. Noyce concedes that it was quite possible that the claimant could have hit the trash cart or the sink without her seeing it. *T. at 50.* Furthermore, and more importantly, whether the claimant actually struck the trash cart or the sink is completely irrelevant. This issue would only be relevant if it were not possible for claimant to have injured her shoulder unless she struck the trash cart or the sink. It is beyond reasonable dispute that a person can injure his or her

shoulder by falling with force on the hands. Ms. Noyce testified that she did indeed see the claimant land on her hands and feet, and that afterward, the claimant's hands and knees were "scraped." *T. at 46-47.* Therefore, I find that the mechanism of injury described by claimant and Ms. Noyce very possibly could have produced a shoulder injury, even if claimant did not in fact strike a trash cart or a sink.

In support of my conclusion that claimant proved a compensable shoulder injury, I would note that the claimant was diagnosed on March 20, 2001 with a rotator cuff tear. *CX1, p. 73.* There is simply no other possible alternative cause of this rotator cuff tear in the record. Furthermore, there is no evidence in the record that the claimant ever suffered from right shoulder problems prior to the September 6, 2000 work incident. Therefore, I find that claimant has proven by a preponderance of the evidence that her rotator cuff tear was caused by the September 6, 2000 incident.

SHELBY W. TURNER, Commissioner