

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F301871

MARIA CRUZ, EMPLOYEE	CLAIMANT
WORKSOURCE, EMPLOYER	RESPONDENT
WAUSAU INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED JANUARY 27, 2004

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

Claimant represented by HONORABLE JAY TOLLEY, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE JAMES A. ARNOLD, II, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed September 8, 2003.

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

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on April 16, 2003, and contained in a pre-hearing order filed April 17, 2003, are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her right knee while employed by the respondent.

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

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____ I must respectfully dissent from the majority opinion finding that claimant failed to establish a

compensable injury with medical evidence supported by objective findings.

It appears undisputed that on or about October 15, 2002, claimant was involved in a work-related accident when she fell, striking her right knee. Claimant was taken to the hospital in Siloam Springs on the date of the accident. Thereafter, x-rays and an MRI scan were performed and failed to reveal any obvious abnormalities. Claimant was also prescribed physical therapy. Apparently, respondent paid for quite a bit of the expenses of the initial medical testing and treatment.

The majority has denied this claim due to a lack of objective findings. However, Dr. Russell Green, claimant's primary treating physician, stated in a report dated October 24, 2002 that "[e]xam shows no swelling today, and with the removal of the immobilizer we are now able to get an exam which is essentially normal." In my opinion, the statement that the "exam shows no swelling today" indicates that swelling was observed on prior office visits. Further, in the same report, Dr. Green opined that claimant had experienced "a bruising of the knee." On Commission Form AR-3, Dr. Green's clinic indicated that the diagnosis was

contusion of the right knee. Additionally, in a report dated November 14, 2002, Max Beasley, also with the same health clinic, reported that claimant "does still have some effusion." Again, this notation appears to indicate that effusion or swelling had been noted on prior office visits.

The above evidence is sufficient to establish claimant's right knee injury with medical evidence supported by objective findings. Further there is no evidence of prior problems with, or an intervening injury to, this knee. Accordingly, claimant has met her burden of proof and the opinion of the Administrative Law Judge should be reversed.

SHELBY W. TURNER, Commissioner