

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F309834

ROSA CORTEZ,  
EMPLOYEE

CLAIMANT

BRIGHTON HOUSE CARE CENTER,  
EMPLOYER

RESPONDENT

ARKANSAS SELF INSURED,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED NOVEMBER 15, 2004

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 CURTIS NEBBEN, Attorney  
at Law, Fayetteville, Arkansas.

Decision of the Administrative Law Judge: Affirmed and  
adopted.

OPINION AND ORDER

The claimant appeals from a decision of the  
Administrative Law Judge filed May 28, 2004. 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 June 24, 2002, the relationship of  
employee-self insured employer-third party  
administrator existed between the parties.

3. On June 24, 2002, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$187.00 for total disability and \$154.00 for permanent partial disability.
4. The claimant has failed to prove by the greater weight of the credible evidence that she sustained any "compensable injuries" to her back, knees, or right elbow on June 24, 2002. Specifically, she has failed to prove the actual existence of any physical injuries to her knees or her right elbow, which are "established" by medical evidence and are supported by "objective findings," as required by Ark. Code Ann. § 11-9-102(4)(D). She has also failed to prove the occurrence of any physical injury to her back or lumbar spine on June 24, 2002, that arose out of and occurred in the course of any employment, that was caused by a specific incident and that is identifiable by time and place of occurrence, as required by Ark. Code Ann. § 11-9-102(4)(A)(i).
5. The respondents have denied the occurrence of any compensable injuries to the claimant's back, knees, or elbow on June 24, 2002.

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.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

**DISSENTING OPINION**

I dissent from the majority opinion finding that Claimant's back injury is not compensable. Respondents did not offer any testimony to refute Claimant's testimony that she slipped and fell and sought treatment for her left side, namely her elbow, knee and back immediately thereafter. The majority holds that Claimant is not entitled to benefits for her back and related leg pain because she delayed in receiving additional medical treatment. I find, however, that Respondents did not dispute Claimant's testimony that she continued to complain to her supervisors that she was in pain during the months following the injury and that she did not seek treatment due to her inability to pay for these

expenses. Moreover, the MRI of her lumbar spine shows that Claimant has a bulging disc at L5-S1 with "fairly prominent" neural foraminal encroachment bilaterally and possibly some nerve root edema involving the S1 nerve root. I also find that there is no evidence of any intervening cause that could have caused Claimant to experience the onset of back pain and leg pain except for her fall at work.

For these reasons, I dissent from the majority opinion.

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SHELBY W. TURNER, Commissioner