

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F208606

MARTY POWERS, EMPLOYEE	CLAIMANT
CITY OF FAYETTEVILLE, EMPLOYER	RESPONDENT
MUNICIPAL LEAGUE WCT, CARRIER	RESPONDENT

OPINION FILED DECEMBER 21, 2004

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

Claimant represented by HONORABLE AARON MARTIN, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE J. CHRIS BRADLEY, Attorney at Law, Little Rock, 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 18, 2003.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim;

2. The stipulations agreed to by the parties at the time of the hearing which are set forth above are hereby accepted as fact.

3. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury in the form of hearing loss as a result of his employment with 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.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

\_\_\_\_\_ I must respectfully dissent from the opinion of the majority finding that claimant failed to prove by a preponderance of the evidence that he suffered a compensable injury in the form of hearing loss as a result of his employment with respondent. The majority's denial of benefits is based solely on a finding that claimant's hearing loss is not established with medical evidence supported by objective findings.

It appears that the Arkansas appellate courts, in particular the Supreme Court, have discussed objective findings in two distinct and separate contexts. These are: (1) medical evidence supported by objective findings is necessary to establish the existence and extent of the physical injury; and (2) objective findings are also defined in part as medical opinions concerning causation that are stated within a reasonable degree of medical certainty. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999); Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001).

The majority has found that the results of audiograms do not constitute objective findings to establish the existence and extent of hearing loss because the

responses come under the voluntary control of the patient. This finding calls into question the mere existence of hearing loss. However, I point out that the parties stipulated that claimant suffers from a bilateral permanent anatomical impairment of 9.4% as a result of his hearing loss. This stipulation has been accepted as fact by the Commission. Since the parties stipulated to the existence and extent of a physical injury, it is of no consequence that audiograms may or may not produce objective findings as defined by the Workers' Compensation Law. A specific finding in this regard should be withheld until another case comes along where this issue is a proper one for consideration.

Further, even though claimant's hearing loss has been established through the stipulation of the parties, claimant must still prove that there is a causal connection between the hearing loss and his employment as a firefighter. As noted above, medical opinions regarding causation must be stated within a reasonable degree of medical certainty. Drs. Crocker and Dornhoffer clearly opined that claimant's hearing loss is causally related to his exposure to noise while performing his duties as a firefighter. Therefore, based on the above evidence, I find

that claimant has met his burden of proving by a preponderance of the evidence that he sustained a compensable injury.

For the foregoing reasons, I must respectfully dissent. The opinion of the Administrative Law Judge should be reversed.

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SHELBY W. TURNER, Commissioner