

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F213875

NAOMI J. VanHOOZER, EMPLOYEE	CLAIMANT
KROGER, EMPLOYER	RESPONDENT
RSKCo, INSURANCE CARRIER	RESPONDENT

OPINION FILED JULY 7, 2004

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

Claimant represented by HONORABLE JOE M. ROGERS, Attorney at Law, West Memphis, Arkansas.

Respondent represented by HONORABLE WENDY WOOD, 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 August 26, 2003.

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 at the prehearing conference, and contained in the Prehearing Order filed May 14, 2003, are hereby accepted as fact.

3. The claimant has failed to prove, by a preponderance of the credible evidence, that she sustained a compensable injury, caused by a specific incident, arising out of and in the course of her employment which produced physical, bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. § 11-9-102.
4. The claimant has failed to prove, by a preponderance of the credible evidence, that she sustained a gradual onset injury caused by rapid repetitive motion, arising out of and in the course of her employment with the respondent.
5. The claimant has failed to prove, by a preponderance of the credible evidence, that her physical problems and need for medical treatment were directly and causally related to any injury sustained while working for the Kroger Company.
6. Respondents have controverted this claim in its entirety.

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 prove by a preponderance of the evidence that she sustained a compensable injury to her right knee.

Contrary to the finding by the majority, I believe claimant gave credible testimony concerning the difficulties she had with her right knee. Admittedly, claimant had preexisting degenerative conditions in both knees. However, I find that claimant sustained an acute, work-related injury to the right knee.

Claimant was a 71 year-old floral designer for the employer. On October 25, 2002, claimant was making fruit baskets. She was required to turn, twist, or pivot while performing these job duties. As claimant twisted, she felt a sudden and severe pain in her right knee. She described this pain as being different from any she had experienced in the past, as this pain was sharp as opposed to a dull ache. Claimant immediately reported her knee pain to her supervisor and both apparently did not realize there was a possible causal connection with her employment because she had had so much prior difficulty with both knees.

Claimant's condition did not get better and she had an MRI scan done in November 2002. This scan not only revealed the expected degenerative abnormalities, but also a meniscus tear and joint effusion. It appears that claimant did not specifically report her injury as work related until on or about November 27, 2002. About two weeks before this notice of injury, claimant had presented to Dr. Robert Miller, who reported on November 14, 2002 that "I am concerned that there may be an underlying arthritic component to her knee pain. Her MRI when I reviewed it though does look more consistent with a meniscus type tear."

Claimant obtained a second opinion from Dr. James Galyon, who noted the following in a report dated January 31, 2003:

In my opinion, Ms. VanHoozer has degenerative changes in her knee with involvement of both the medial and lateral meniscus. When she planted her foot securely and rotated her body to reach around somewhat behind her to pick up her work materials on October 25, 2002, she sustained a rotary stress on her knee creating a tear in the previously degenerated menisci. I do believe that this is work-related....

Based on claimant's credible testimony plus the opinions of Drs. Miller and Galyon that a causal connection exists between claimant's present difficulties and her employment, I find that claimant has proven by a preponderance of the evidence that she sustained a compensable aggravation of her preexisting knee condition. Accordingly, the opinion of the Administrative Law Judge should be reversed.

SHELBY W. TURNER, Commissioner