

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F008816

ODESSIA BASS, EMPLOYEE	CLAIMANT
MCGEHEE PUBLIC SCHOOLS, EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, CARRIER	RESPONDENT

OPINION FILED MARCH 28, 2005

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

Claimant represented by HONORABLE OSCAR H. HIRBY, Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE CAROL L. WORLEY, 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 September 4, 2003.

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

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties during January, February, and March, 2000, at which time the claimant was earning sufficient wages to entitle her to compensation rate of \$101.00/\$101.00.

2. 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.

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 respectfully dissent from the Majority's denial of benefits in this case. In contrast to the Administrative Law Judge, and the Majority which is affirming and adopting her decision, I believe that the claimant's testimony was sufficiently credible to establish the occurrence of the specific incident injury to her neck as she has alleged. I note that her testimony was supported not only by relevant documentation, but by the testimony of supporting witnesses as well.

The claimant was a long time employee of the McGehee School District. At the time of her injury, she was working as a cook in the elementary school cafeteria. She described her injury as having occurred in the following manner:

Q: Okay. Would you tell us anything that happened in the particular week?

A: Yeah. The 18th was when I was doing spaghetti -- cooking spaghetti that day and I was -- like I say, I was lifting this pan trying to lift it off the table, I felt something pop in my neck. I told Gay. I said, "Gay it feels like

something - - I hurt myself. It feels like something popped in my neck." She said, "Oh, you'll be okay." So it did -- it really didn't hurt too bad. I just could feel it. And then it just went away right then that day.

The "Gay" referred to in the claimant's testimony was Gay Bartlett, the Cafeteria Manager at the time of the claimant's injury. In questioning the claimant's credibility, the Administrative Law Judge relied, to a great degree, upon Ms. Bartlett's testimony.

While it is true that Ms. Bartlett could not recall the incident described, I do not attach any significant weight to her testimony. Not only was Ms. Bartlett evasive while testifying, her memory appeared to be poor and she frequently testified that she could not recall or recollect many incidents that happened relevant to this claim. For example, Ms. Bartlett testified that she was not aware of the claimant's physical ailments, but admitted that she provided her a sling because the claimant's neck and shoulder pain was limiting the claimant's ability to raise her arm. Ms. Bartlett also testified that she could not recall having sprayed WD-40 on the claimant's shoulder and neck even though the claimant and Stella Grant, the

current Cafeteria Manager, specifically recalled this incident.

The Administrative Law Judge also noted the claimant was late in reporting her injury. While that is true, it should be also be remembered that the respondent employer's reporting procedures were almost nonexistent. The confusion about reporting injuries was obvious from the testimony of all of the witnesses, including two who are currently employed in administrative positions with the school district.

The medical record also generally supports the claimant's injury. She first presented for treatment of shoulder pain to the Mainline Dermott Clinic on January 21, 2000, only three days following the incident of January 18, 2000. Significantly, her prior medical records from this clinic do not reflect a past history of neck or shoulder problems. She also related to Dr. Roman and Dr. Williams that the pain in her neck and shoulder was the result of a sudden onset.

Likewise, the existence of her injury is supported by objective medical findings. Not only did a MRI of the claimant's cervical spine reveal the presence of a herniated

disc, but in his surgical notes of April 24, 2000, Dr. Williams visually observed a disc tear and disc fragments.

In short, it is my belief that the claimant has met her burden of establishing a compensable injury and that she should be awarded all appropriate benefits. For that reason, I dissent from the Majority's dismissal of her claim.

SHELBY W. TURNER, Commissioner