

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F113832

ROSE A. DORRIS, EMPLOYEE	CLAIMANT
TOWNSENDS OF ARKANSAS, A SELF-INSURED EMPLOYER	RESPONDENT
HELMSMAN MANAGEMENT SERVICES, TPA	RESPONDENT

OPINION FILED JANUARY 19, 2005

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

Claimant represented by HONORABLE TOM THOMPSON, Attorney at Law, Batesville, Arkansas.

Respondent represented by HONORABLE RICHARD LUSBY, Attorney at Law, Jonesboro, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed August 14, 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 and set forth above are hereby accepted as fact;
3. The claimant failed to prove by a preponderance of the evidence that she sustained an injury to her left shoulder as the result of a specific incident, identifiable by time and place of occurrence;

4. The claimant failed to prove by a preponderance of the evidence the elements necessary to establish a compensable specific incident injury;
5. The respondents 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 respectfully dissent from the majority opinion in this case. I find that Claimant sustained a compensable left shoulder injury as a result of a specific incident, identifiable by time and place and occurrence.

During August of 2001, Claimant credibly testified that she was using a shovel to break up ice when she experienced an immediate onset of pain in her left shoulder, which she reported to the plant nurse, Faye Schales, who gave her an ice pack and ibuprofen. Likewise, David Kunkel, Claimant's supervisor, testified that she reported left shoulder pain to him in August of 2001. Claimant described her incident stating, "I was pushing the shovel into the ice and whenever I took my arm and just pushed real hard in there to break it loose, I felt a pain here, like somebody hit me on the shoulder."

Following Claimant's injury, she reported almost daily to the nurse's station, advising her of her pain. Later, she filled out a form when she went to see the doctor and Claimant was advised to state "gradual onset injury," instead of "specific incident." However, that form and every

other form that Claimant filled out clearly describes a specific incident injury. Claimant's first form stated "shoulder started hurting while shoveling partially frozen ice." The employee's notice of injury form signed by Claimant on 10/16/01 also states "shoulder started hurting while shoveling partially frozen ice." On the First Report of Injury Form, prepared by Ms. Schales, it provides, in three locations that Claimant was "shoveling ice" underneath the language that asks "specific activity the employee was engaged in when accident or illness exposure occurred."

Claimant never stated in writing or otherwise, that her injury was a "gradual onset" injury. In fact, Ms. Schales, participated in filling out the Claimant's forms and she explained that she, not the Claimant, wrote in "gradual onset" on the forms. She explained this action by testifying that "I think when she first started coming in, maybe she was just having pain, you know, and didn't say what it was from." However, there is no evidence that Claimant ever attributed her shoulder pain to anything other than shoveling ice. Likewise, Ms. Schales and Mr. Kunkle both testified that they had no reason to doubt Claimant's integrity, honesty and credibility.

Claimant's physician, Dr. J.D. Allen, who had previously reported that Claimant's injury was a gradual onset injury, testified as follows:

Q. And of course your note refers to repetitive activities?

A. Yes. But it seems like there was a single event, perhaps that . . . but I don't have it in the notes. What we discussed for the most part was whether her work could have caused her rotator cuff problem.

Q. And the emphasis in that discussion was on the repetitive activity she described to you?

A. Yes. As I recall that was one of the focal points of our discussion, yes.

Q. If she had come to you with a description of a single event, with an emphasis and a focus on that event, is that the type of thing that ordinarily you would put in your notes of a history given by the patient?

A. Well, uh, yes and no. Most of the time probably. But I'm not 100% at anything.

And, on cross-examination, he testified:

Q. Do you always report with specificity the history that's provided by the patient.

A. Obviously not. I don't nearly as well as I should.

Q. And in fact, in this case you did not do so with Rose Dorris?

A. I did not.

Q. You did have recollection even prior to leafing through your records of some reference to an event that occurred with her shoveling ice?

A. I just remembered something about her shoveling something but in flipping back to her written note, yeah.

Q. But you have no specific recollection of discussing that with her on that day?

A. Not without referring to my note, no.

Q. The fact is that you're speculating to some degree, are you not doctor, about what discussions you did have with her on the 15th?

A. Yes.

Q. It is my intention for you in terms of reading the history from your perspective as to whether or not she is stating a specific event that she attributes to the onset of her symptoms?

A. Yes.

Q. This is her description beginning line 16 on page 22 of her deposition.

"Well, I just got there. I had shoveled a couple of shovels, I guess, loose. And then it was kindly hard. So I went to force the shovel in there to break it loose and that's when it hurt. It hurted, it pulled it or whatever it did to it." Is that the type of

resistive force you were referring to on direct examination?

A. Yes.

Q. Can resistive force as described by the Claimant produce the injury that you saw on that film?

A. Yes.

As previously stated, in every document prepared that describes Claimant's injury, the Claimant recites "shoveling ice."

For the foregoing reasons, I respectfully dissent from the majority's opinion and find that Claimant sustained a compensable shoulder injury identifiable by time, place and occurrence. Thus, I would award medical benefits for the treatment of Claimant's shoulder condition.

SHELBY W. TURNER, Commissioner