

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F405347

SCHARNETT R. GINN,
EMPLOYEE

CLAIMANT

GEORGIA PACIFIC,
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED SEPTEMBER 8, 2005

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

Claimant represented by the HONORABLE KENNETH E. BUCKNER,
Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by the HONORABLE ANDREW IVEY,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as modified.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed April 14, 2005. The administrative law judge
found that the claimant proved she sustained a compensable
injury to her left shoulder on October 22, 2003. The
administrative law judge found that the claimant proved she
was entitled to temporary total disability compensation
"from May 4, 2004 through May 11, 2004; July 17, 2004
through August 28, 2004; and October 24, 2004 through
January 10, 2005." The administrative law judge found that

the claimant proved she was entitled to an 8% permanent impairment rating. The administrative law judge found that the respondents were responsible "for all left shoulder medical treatment provided the claimant by Drs. Clark and Howard between October 22, 2003 through January 5, 2005."

After reviewing the entire record *de novo*, the Full Commission affirms as modified the opinion of the administrative law judge. The Full Commission finds that the claimant proved she sustained a compensable injury to her left shoulder on October 22, 2003. We find that the claimant proved she was entitled to temporary total disability compensation from May 4, 2004 through January 5, 2005. We find that the claimant proved she was entitled to a 14% whole-body impairment rating. The Full Commission finds that the claimant treatment provided by Dr. Clark and Dr. Howard was reasonably necessary in connection with the claimant's compensable injury.

I. HISTORY

The parties stipulated that the employment relationship existed on October 22, 2003. The claimant described her job title as a "utility person," an individual who replaced

other employees during their break. The claimant testified that, while she was performing her work duties on October 22, 2003, a few strips of wood fell and hit her left shoulder and back. The claimant testified, "when the wood hit me it just stung me. I checked to see if the skin had been broken or was I bruised or anything but I hadn't at that time."

The claimant testified that she reported the specific incident to William Thomas, her supervisor. William Thomas testified, "She told me that some wood had fell on her shoulder....I did an accident and investigation report." The record contains a First Report Of Injury Or Illness, indicating an injury date of October 22, 2003, and that the employer had been notified on October 22, 2003. The Report indicated, "The EE was struck on the left shoulder by falling sheets of veneer, from a fork lift."

The claimant presented to Dr. Don G. Howard on November 5, 2003, at which time the claimant complained of pain in her right and left shoulders. The history handwritten by Dr. Howard appeared to indicate that the claimant had fallen and had hit her right and left shoulders. Dr. Howard

appeared to report on November 6, 2003 that the claimant's left shoulder was hurting, and that two weeks earlier wood had hit the claimant on her shoulder.

The claimant presented for an MRI of the left shoulder on November 26, 2003. The history at that time indicated, "Patient is s/p trauma, board fell on left shoulder; pt presents with pain and decreased range of motion." The following impression resulted from the MRI:

Prominent irregularity within the substance of the humeral head in the vicinity of the posterior anatomical neck best appreciated on T2 and gradient echo images. Findings suggest fracture/contusion of the humeral head. Fracture extends to the vicinity of the insertion of the supraspinatus tendon, therefore associated partial tear of the supraspinatus muscle at its insertion cannot be completely excluded.

Dr. Charles A. Clark, an orthopaedic surgeon, reported on December 19, 2003:

This is a consultation request today from Dr. Don Howard for evaluation of persistent L shoulder pain. This was injured, I believe, in October and she developed some pain in the L shoulder after that. She was worked up appropriately, including radiographs and an MRI. She had persistent pain and there was confusion, I think, based on the MRI report, which showed a bone bruise and possibly a fx of the greater tuberosity at the insertion of the supraspinatus....She has continued to work, which involves pulling on that L shoulder and I think this is probably what is aggravating her. I

have reviewed the MRI and I think she had a bone bruise. I looked at the results and I think basically she had a tendinitis with a tendinosis at the insertion of the supraspinatus....

Dr. Clark's impression was "Findings are consistent with impingement of the L shoulder secondary to trauma."

Dr. Clark diagnosed, "Impingement, L shoulder secondary to a contusion. Prognosis is excellent with conservative management."

The claimant agreed at hearing that she stopped working on or about May 4, 2004. The claimant testified that the respondent-employer sent her home, because there was no light duty available.

The record contains a report from Ron Askew, apparently dated May 4, 2004:

I drive a Jitney for the Swing Shift Dryer Crew on the Green End. I was returning from loading #3 Dryer when I had to stop at the dry end of #2 Dryer. So Mike Currier could unload a veneer buggy that Scharnett Ginn was stacking 1/6 strip in.

I saw the veneer fall off the load of 1/6 strip as the lift began to lift up. All of the falling strip landed in the veneer buggy. None of the falling strip ever touched any part of her body. They all fell back into the veneer buggy. The reason She wasn't struck, was because she was standing on the south side of the buggy. When the lift started to back up the strip fell off the

load landing in the middle of the buggy. Not on the south side or in the floor. I was watching the whole thing. The veneer never hit her.

William Thomas, the supervisor, testified, "Ron Askew said that he sat there and watched it and didn't see no wood hit her."

Dr. Clark reported on May 10, 2004:

This is a f/u for complex problem. She has symptoms of bilateral shoulders. L shoulder has previously been worked up and she has been found to have impingement. She did not respond to conservative measures. Recommendation was made for arthroscopic treatment, but she has elected to try to treat this conservatively. However, she was not able to return to work and therefore has returned today to schedule surgery on her L shoulder. She also has complaints of numbness and tingling on her hands that is intermittent, but it is mild.

I have reviewed the NCV studies and she does have early cubital tunnel and early carpal tunnel syndrome, but they are very mild and I think treatment with injection of corticosteroids would be reasonable. We will do this at time of surgery....I will see her for surgery with respect to the L shoulder scope on the 17th of May once cleared through Workman's Compensation....

On July 13, 2004, Dr. Clark performed an "arthroscopic evaluation, labral and glenohumeral debridement, anterior acromioplasty, distal claviclectomy, subacromial bursectomy and rotator cuff debridement." Dr. Clark's pre-operative

and post-operative diagnoses were "Impingement, left shoulder, with acromioclavicular joint early osteoarthritis and labral degeneration."

Dr. Clark reported on August 16, 2004:

Ms. Ginn is a patient of mine and has been since she injured her left shoulder on October 22, 2003. She was initially evaluated in my office in December of 2003 as a consult from Dr. Don Howard. After that time the findings have been consistent with persistent shoulder pain due to injury of the shoulder. MRI showed she had a bone bruise and contusion of the rotator cuff. She developed persistent impingement following that despite conservative measures including injections, physical therapy, rest, and anti-inflammatories. She eventually underwent a decompression of the left shoulder.

She is very concerned because her Workman's Compensation was denied for this injury and wanted a letter indicating that this was work-related. I have reviewed her records and her findings from her original report with Georgia Pacific and find that, within a reasonable degree of medical certainty, the injury to her left shoulder was work-related.

I think the confusion in this instance is that she also developed carpal tunnel syndrome in both upper extremities. I had a letter from the Sedgwick James CMS wanting to clarify how the carpal tunnel syndrome was related to the injury. Of course, it was my feeling that the carpal tunnel syndrome was not related to the injury to the shoulder and that these were separate entities. However, her shoulder is directly related to her Workman's Compensation

claim, and I think that this situation should be rectified.

The claimant continued to follow up with Dr. Clark, who reported on November 1, 2004:

There is a lot of confusion today about when she was taken off of work. Also, I have looked at my notes. I took her off work, as far as I can tell, on 5/4/04 x 1 wk and then I let her RTW on 5/11/04 with specific restrictions on the LUE. She was maintained in this status until her surgical evaluation and treatment. She currently was released on 9/8/04 after she indicated that she was doing well and motion was good to RTW, but this has not been successful to date in that she has recurring pain and soreness in the shoulder and feels like it is weak....I have recommended we go ahead and obtain a FCE on the L shoulder. She has been off work x 1 wk and will continue her time off work for at least another week while we get the results of the FCE....I will see her back here probably next week after the FCE has been completed with a tentative RTW date on 11/8/04.

Dr. Clark diagnosed "L shoulder impingement, s/p surgical decompression with persistent soreness and weakness."

On November 2, 2004, the claimant signed the respondent-employer's Medical Certification Form, Employee Medical Leave. The claimant requested to be absent from work beginning October 26, 2004 until an undetermined date.

A pre-hearing order was filed on November 4, 2004, and an amended pre-hearing order was filed on November 15, 2004 to extend discovery time for taking Dr. Clark's deposition. The claimant contended that she sustained a compensable injury to her left shoulder on or about October 22, 2003. The claimant contended that she was entitled to temporary total disability compensation from May 4, 2004 to January 5, 2005. The claimant contended that she was entitled to reasonably necessary medical treatment and a fee for legal services. The respondents contended that the claimant could not prove she sustained a compensable injury, so that the claimant was "not entitled to indemnity or medical benefits."

The parties agreed to litigate the issues, "whether the claimant sustained a compensable injury on October 22, 2003; whether the claimant is entitled to associated medical and indemnity benefits; controversion, and attorney's fees."

The parties deposed Dr. Clark on December 13, 2004. The respondents' attorney questioned Dr. Clark:

Q. Am I correct in stating, Doctor, you opined the Claimant's left shoulder impingement was directly related to her workman's compensation claim?

A. I felt that it was.

Q. And in stating this opinion, was any consideration given to the fact that she appeared to have multiple degenerative conditions in both the left and the right shoulder?

A. Correct.

Q. Am I also correct in stating, Doctor, that the basis of your opinion was, as stated in the letter, upon her medical records from both, I am guessing from both Dr. Howard and from yourself and also from her findings from her original report with Georgia-Pacific?

A. Correct.

Q. So, Doctor, would it be fair to state your opinion as to causation is based upon both medical records, the patient's subjective history provided to you and the other doctor, Dr. Howard, and this original report from Georgia-Pacific?

A. Yes, and the MRI.

The claimant's attorney questioned Dr. Clark:

Q. Based on the information you have, do you feel like this lady's shoulder problems are more likely than not related to her injury at work and the overuse on the other side as a result?

A. Well, I think the right side was, I think it was the right side, was the secondary one she complained about. I think that was related to overuse. I believe that's right. And her left side was due to trauma. And based on her history that she gave me, it was consistent with my findings of physical examination and of the MRI.

Q. And your findings and physical exam, was it, likewise, consistent with trauma?

A. Yes.

Q. Okay, it wasn't consistent with some chronic development?

A. Okay, it could be consistent with some chronic development, too, but you couple it with the MRI and a bone contusion, and that's unlikely.

Q. It's more likely than not to be...

A. (Interjecting) Well, it's more likely to be trauma.

The final report of record from Dr. Clark was dated January 5, 2005:

This is a f/u for persistent soreness in her L shoulder following a decompression. The strength on her FCE came back medium strength, which means she can do her job at Georgia Pacific....I will see her back here on a prn basis....As far as her partial/permanent impairment rating based on her loss of strength in the L shoulder, which I believe is a permanent finding, according to the "Guides to the Evaluation of Permanent Impairment," 5th ed., based on table 16-35, the strength deficit is ~20% in all directions, especially flexion, abduction, and internal/external rotation. This equates to an overall rating in the R shoulder of 14%. This converts to an overall rating of 8%. This was within a reasonable degree of medical certainty.

A hearing was held on January 18, 2005. The claimant contended at that time that she was entitled to an 8% anatomical impairment.

The parties deposed Michael R. Currier on January 31, 2005. Mr. Currier testified that he was working with the claimant on the date of the alleged accident, but that he did not personally witness any wood strike the claimant.

The administrative law judge found, in pertinent part:

- 3) The claimant has proven by a preponderance of the evidence that she sustained a compenable (sic) injury to her left shoulder on October 22, 2003, supported by objective medical findings.
- 4) Claimant has proven by a preponderance of the evidence that she is entitled to TTD benefits from May 4, 2004 through May 11, 2004; July 17, 2004 through August 28, 2004; and October 24, 2004 through January 10, 2005.
- 5) The claimant has proven by a preponderance of the evidence that respondents should pay the claimant the 8% permanent impairment rating pursuant to Dr. Clark's findings.
- 6) The claimant has proven ... that respondents are responsible for all left shoulder medical treatment provided the claimant by Drs. Clark and Howard between October 22, 2003 through January 5, 2005.

The respondents appeal to the Full Commission.

II. ADJUDICATION

A. Compensability

Ark. Code Ann. §11-9-102(4)(i) defines "compensable injury":

An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D). The claimant's burden of proof shall be a preponderance of the evidence. Ark. Code Ann. §11-9-102(4)(E)(i).

In the present matter, the Full Commission affirms the administrative law judge's finding that the claimant sustained a compensable injury to her left shoulder on October 22, 2003. The claimant, who the Commission finds was a credible witness, testified that some strips of wood fell and hit her left shoulder and back while the claimant was performing her work assignments on October 22, 2003. The claimant's credible testimony indicated that this accident was caused by a specific incident which was

identifiable by time and place of occurrence. The claimant reported the specific incident to her supervisor. A First Report Of Injury indicated that the respondent-employer was notified of the accident on October 22, 2003, and the First Report corroborated the claimant's testimony. The medical records also corroborated the claimant's testimony. For instance, the report of Dr. Howard on November 6, 2003 indicated that the claimant's left shoulder was hurting as the result of wood falling and hitting the claimant's left shoulder.

The claimant also established a compensable injury by medical evidence supported by objective findings. An MRI on November 26, 2003 showed a fracture and contusion of the humeral head in the claimant's left shoulder, as well as a partial tear of the supraspinatus muscle. Dr. Clark, an orthopedic surgeon, reviewed the diagnostic testing and opined that the claimant had sustained a bone bruise as a result of the accidental injury. Dr. Clark also diagnosed an impingement of the claimant's left shoulder. Dr. Clark ultimately performed surgery on the claimant's left shoulder. Dr. Clark expressly found in August 2004 that,

"within a reasonable degree of medical certainty, the injury to her left shoulder was work-related." Dr. Clark also wrote in August 2004, "her shoulder is directly related to her Workman's Compensation claim." Dr. Clark's deposition testimony did not affect his causation opinion. Dr. Clark agreed at deposition that the claimant's left-shoulder impingement was "directly related" to the claimant's worker's compensation claim. Dr. Clark explicitly opined that the claimant's left-shoulder condition was "more likely to be trauma" rather than a degenerative condition.

Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. §11-9-102(16)(B). Where a medical opinion is sufficiently clear to remove any reason for the trier of fact to have to guess at the cause of injury, that opinion is stated within a reasonable degree of medical certainty. Huffy Service First v. Ledbetter, 76 Ark. App. 533, 69 S.W.3d 449 (2002), citing Howell v. Scroll Tech., 343 Ark. 297, 35 S.W.3d 800 (2001). The Full Commission finds in the present matter that Dr. Clark's opinions addressing compensability were stated within a reasonable degree of

medical certainty. We find that Dr. Clark's opinions addressing causation and compensability patently demonstrate that the claimant's left-shoulder condition was the result of the October 22, 2003 accidental injury. Any assertion that Dr. Clark's treatment was related to a degenerative condition rather than the accidental injury would be based on speculation and conjecture, which can never supply the place of proof. Dena Constr. Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979).

Finally, the Full Commission recognizes that the respondents called several witnesses in order to cast doubt on the claimant's credibility. We have already determined that the claimant was a credible witness. Nevertheless, the Full Commission notes the deposition testimony of Michael R. Currier. Mr. Currier testified that he was working with the claimant on the date of the accidental injury, October 22, 2003. Although Mr. Currier did not witness the wood strike the claimant's left shoulder, he credibly testified that the claimant immediately informed him about the accident immediately after it happened, and that he helped the claimant pick up wood which had fallen from a forklift. The

determination of the credibility of witnesses and the weight to be given their testimony are matters exclusively within the province of the Commission. Freeman v. Con-Agra Frozen Foods, 70 Ark. App. 306, 19 S.W.3d 43 (2000). In the present matter, the Full Commission finds that the claimant was a credible witness, and we find that the claimant's testimony was entitled to significant and controlling weight. We assign minimal weight in this case to the assertion of Mr. Askew and others that no wood struck the claimant's left shoulder.

The Full Commission finds that the claimant proved she sustained an accidental injury causing physical harm to the body, which accident arose out and in the course of the claimant's employment, and which required medical services and resulted in disability. We find that the accident was caused by a specific incident identifiable by time and place of occurrence on October 22, 2003. The claimant also established a compensable injury by medical evidence supported by objective findings. The decision of the administrative law judge is affirmed.

B. Temporary Disability

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. Ark. State Hwy. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The administrative law judge found in the present matter, "Claimant has proven by a preponderance of the evidence she is entitled to TTD benefits from May 4, 2004 through May 11, 2004; July 17, 2004 through August 28, 2004; and October 24, 2004 through January 10, 2005." The Full Commission affirms this finding as modified. We find that the claimant prove she was entitled to temporary total disability compensation from May 4, 2004 through January 5, 2005.

The Full Commission has determined that the claimant sustained a compensable accidental injury on October 22, 2003. Dr. Clark opined in December 2003 that the claimant had sustained an impingement and contusion of her left shoulder secondary to trauma. The claimant credibly testified that she was sent home from work beginning May 4, 2004, because there was no light work duty available. The preponderance of evidence therefore demonstrates that the claimant remained within a healing period for her

compensable injury and was totally incapacitated to earn wages beginning May 4, 2004. Dr. Clark performed left-shoulder surgery in July 2004. We recognize Dr. Clark's November 1, 2004 letter, in which Dr. Clark stated he had attempted to release the claimant to restricted work duty on May 11, 2004. The Full Commission again notes, however, the claimant's testimony that no restricted work was available with the respondents. Dr. Clark also indicated, in the November 1, 2004 letter, that he had attempted to release the claimant to light duty on September 8, 2004. However, the record does not show that restricted duty was available for the claimant in September 2004. Further, the evidence shows that the claimant remained within her healing period at that time. We note Dr. Clark's diagnosis on November 1, 2004, "Left shoulder impingement, s/p surgical decompression with persistent soreness and weakness." Dr. Clark also arranged a functional capacity evaluation in order to determine whether or not the claimant was ready to return to work.

The preponderance of evidence therefore demonstrates that the claimant continued within her healing period and

was totally incapacitated to earn wages at all times beginning on May 4, 2004, until Dr. Clark assigned a permanent impairment rating on January 5, 2005. Permanent impairment, which is a medical condition, is any permanent functional or anatomical loss remaining after the healing period has ended. Johnson v. General Dynamics, 46 Ark. App. 188, 878 S.W.2d 411 (1994). Moreover, the healing period continues until the employee is as far restored as the permanent character of her injury will permit, and if the underlying condition causing the disability has become stable and nothing in the way of treatment will improve that condition, the healing period has ended. Harvest Foods v. Washam, 52 Ark. App. 72, 914 S.W.2d 776 (1996). The evidence in the present matter indicates that the claimant's condition had become stable by January 5, 2005, and that nothing further in the way of treatment would improve that condition, so that the claimant reached the end of her healing period on January 5, 2005. The evidence also shows that the claimant remained within her healing period and was totally incapacitated from earning wages beginning May 4, 2004 and continuing through January 5, 2005. The claimant

thus proved by a preponderance of the evidence that she was entitled to temporary total disability compensation from May 4, 2004 through January 5, 2005. We affirm as modified the decision of the administrative law judge regarding temporary total disability.

C. Anatomical Impairment

An injured worker must prove by a preponderance of the evidence that she is entitled to an award for a permanent physical impairment. Weber v. Best Western of Arkadelphia, Workers' Compensation Commission F100472 (Nov. 20, 2003). Ark. Code Ann. §11-9-102(4)(F)(ii)(a) provides, "Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment." "Major cause" means "more than fifty percent (50%) of the cause," and a finding of major cause "shall be established according to the preponderance of the evidence." Ark. Code Ann. §11-9-102(14). Any determination of the existence or extent of physical impairment shall be supported by objective and measurable physical or mental findings. Ark. Code Ann. §11-9-704(c)(1)(B). "Objective findings" are those findings which cannot come under the

voluntary control of the patient. Ark. Code Ann. §11-9-102(16) (A) (i).

In the present matter, Dr. Clark assigned an 8% anatomical impairment rating based on his interpretation of the Guides to the Evaluation of Permanent Impairment, Fifth Edition. Pursuant to Ark. Code Ann. §11-9-522(g) and Commission Rule 34, however, the Workers' Compensation Commission has adopted the Guides to the Evaluation of Permanent Impairment (4th ed. 1993) to be used in assessing anatomical impairment. Further, both Dr. Clark and the administrative law judge relied on subjective criteria in determining that the claimant had sustained an 8% anatomical impairment.

It is the duty of the Commission to translate evidence into findings of fact. Polk County v. Jones, 74 Ark. App. 159, 47 S.W.3d 904 (2001). In the present matter, Dr. Clark performed an arthroscopy and claviclectomy. According to the Guides, Table 27, page 61, the claimant would be entitled to a 24% anatomical impairment rating for the upper extremity. Pursuant to Table 3 of the Guides, p. 20, the 24% rating to the upper extremity would convert to a 14%

whole person rating. The Full Commission therefore finds that the claimant proved she was entitled to a 14% anatomical impairment rating. We find that the 14% anatomical impairment rating is based on objective and measurable physical findings, that the 14% rating conforms with the Guides, 4th Ed., and that the claimant's compensable injury was the major cause of the claimant's 14% whole person impairment.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved she sustained a compensable injury on October 22, 2003. The Full Commission finds that the claimant proved she was entitled to temporary total disability compensation from May 4, 2004 through January 5, 2005. We find that the claimant proved she was entitled to a 14% whole person impairment. The Full Commission finds that the treatment provided by Dr. Howard and Dr. Clark was reasonably necessary in connection with the claimant's compensable injury, pursuant to Ark. Code Ann. §11-9-508(a). The Full Commission therefore affirms as modified the opinion of the administrative law judge. The claimant's attorney is entitled to fees for legal services

pursuant to Ark. Code Ann. §11-9-715 (Repl. 2002). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(2).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that the claimant has proven by a preponderance of the evidence that her alleged work related injury of October 22, 2003, is compensable, and that she is entitled to temporary total disability benefits from May 4, 2004 through January 5, 2005. In addition, I must dissent from the majority opinion finding that the claimant is entitled to 14% impairment to the body as a whole, rather than a 8% permanent physical impairment as awarded by the Administrative Law Judge.

My carefully conducted de novo review of this claim in its entirety reveals that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her left shoulder on October 22, 2003. Therefore, the claimant is not entitled to benefits related to that alleged injury.

As a preliminary matter, the Administrative Law Judge awarded the claimant an 8% permanent physical impairment to the body as a whole, based upon Dr. Clark's assessment of her physical impairment on January 5, 2004. The issue of the claimant's physical impairment, however, was not presented for consideration on appeal by either party in terms of the amount awarded. Although the respondent appealed the compensability of the claimant's alleged injury, and they alleged that the claimant's impairment rating had been assigned using the wrong edition of the AMA, specifically the 5th Edition as opposed to the 4th, the claimant did not cross-appeal this issue. In fact, the claimant specifically stated in her brief to the Full Commission:

The claimant has established her entitlement to temporary total

disability during the periods set forth in [the ALJ's] decision. She also clearly has an 8% whole body impairment as a result of this.

In the recent case of White v. Arkansas Electric Co-op, Inc., Full Commission Opinion filed March 29, 2005 (F103456), this Commission found that the claimant was not entitled to certain benefits because he failed to raise the issue of those benefits on appeal. In support of this decision, the Full Commission wrote, "The claimant instead stated, among other things, that the administrative law judge's opinion was 'correct legally and factually.'" Likewise, in the present case, the claimant stated in her brief that "the decision of the Administrative Law Judge is well-founded, well thought out, supported by ample evidence and should be affirmed." Therefore, I must respectfully dissent from the decision to raise the claimant's award of permanent physical impairment from 8% to 14% was improper.

Turning now to the issue of compensability, on the date of her alleged injury, the claimant was pulling sheets of wood veneer off of a conveyor belt and stacking them in a buggy for the forklift driver to move. As the forklift

driver was lifting the stack of veneer sheets from the buggy, a few sheets slid off of the forklift, allegedly hitting the claimant in her left shoulder and back. The claimant testified that she felt only a sting at the time of this incident, and that upon examining her left shoulder, her skin did not appear to be bruised or broken. The claimant continued to work, and approximately two hours later, she reported the incident to her supervisor. The claimant's supervisor investigated the incident and made a report to the plant superintendent.

On November 5, 2003, the claimant sought medical treatment from her family physician, Dr. Don Howard, for an unrelated medical condition. During that examination, the claimant mentioned to Dr. Howard that she was experiencing pain and discomfort in her left shoulder. Dr. Howard ordered x-rays of the claimant's shoulder and he referred her to Dr. Charles Clark. An MRI conducted on November 26, 2003, indicated to Dr. Clark that the claimant was suffering from a bone bruise in her left shoulder, for which he treated her conservatively. When conservative treatment failed to alleviate the claimant's symptoms, Dr. Clark performed

arthroscopic surgery on the claimant's left shoulder on July 17, 2004. During that surgical procedure, Dr. Clark found impingement in the claimant's left shoulder. Therefore, he performed a decompression of the claimant's left shoulder, as well. On August 16, 2004, Dr. Clark opined that, within a reasonable degree of medical certainty, the claimant's left shoulder injury was work related. On January 5, 2004, Dr. Clark assigned the claimant with an 8% permanent physical impairment rating to the body as a whole.

It is undisputed that there was an incident on the evening in question wherein an undetermined number of sheets of veneer fell from a forklift while the forklift driver, Mr. Mike Currier, was backing away from a buggy that the claimant had just loaded with these sheets. Mr. Currier did not testify at the hearing of January 18, 2005. However, the claimant's supervisor, Mr. William Thomas, testified concerning information he received from Mr. Currier during his investigation of the incident. In addition, the record contains the oral deposition of Mr. Currier taken on January 31, 2005. Mr. Thomas's statements made during the hearing corroborate those statements made by Mr. Currier

during his deposition. Essentially, when the sheets fell from the forklift, Mr. Currier's view of the claimant was obstructed and he was unable to see her. Therefore, Mr. Currier did not witness the claimant being struck by the sheets of veneer, as she has alleged that she was. Although Mr. Currier stated that when he dismounted his forklift and approached the claimant, she stated to him that the "the wood hit" her, he further stated that she proceeded to assist him in picking up the fallen pieces.

Another forklift driver, Mr. Ronald Askew, did, however, give an eyewitness account of the incident to his supervisor, Mr. Thomas, and to plant superintendent, Mr. Ronnie Erwin. Although Mr. Askew did not testify at the hearing or by deposition, he provided a written statement to Mr. Thomas regarding the incident during Mr. Thomas's investigation of that incident. In his statement, which was dated November 1, 2003, Mr. Askew stated unequivocally that the claimant was not struck by the falling veneer on the evening in question. "The reason that she wasn't struck," added Mr. Askew, "was because she was standing on the south side of the buggy." Mr. Askew further stated that the veneer

sheets fell in the middle of the buggy, as opposed to the south side of the buggy. The testimony of Mr. Currier does not contradict the statements made by Mr. Askew, in that Mr. Currier testified that he did not see where the wood veneer sheets actually fell. In addition, Mr. Currier admitted that the only knowledge that he had concerning the wood having struck the claimant was based upon what she had told him at the time of the incident.

When the claimant examined her shoulder area shortly after the alleged incident, she saw no visible sign of injury. Likewise, the claimant's supervisor, Mr. Thomas, testified that some two hours later, he examined the area of the claimant's upper arm that she told him had been injured. No injury was visible to Mr. Thomas at that time. Moreover, the claimant not only completed a double-shift after her alleged injury, she voluntarily worked the next two days, which were her scheduled days off. It was not until the claimant sought medical treatment for an unrelated health matter on November 6, 2003, that she first reported to her doctor that she had injured her shoulder in a work related accident. In December of 2003, Dr. Clark assessed the

claimant with impingement of the left shoulder, secondary to trauma. In his deposition taken on December 13, 2004, however, Dr. Clark admitted that he had relied solely on the claimant's account of injury in forming his opinion that her condition was trauma related. Otherwise, Dr. Clark admitted that the claimant's shoulder problems could have been caused by tendinitis or tendonosis, which are usually considered degenerative conditions. Moreover, the medical record reveals that the claimant was treated by Dr. Howard on November 5, 2002, for injuries to both of her shoulders resulting from a fall. Furthermore, Dr. Clark confirmed that osteoarthritis was found in the claimant's left shoulder during her surgery of July 13, 2004, and that this arthritis was preexisting. Dr. Clark stated during his deposition that he was unaware of the claimant's prior left shoulder injury. When asked whether he could still state within a reasonable degree of medical certainty that the claimant's shoulder condition was work related should he be given information which contradicted the claimant's account of her injury, Dr. Clark replied, "No. It [his opinion] was based on history."

The sole evidence presented in this claim to support a finding that the claimant was struck by falling veneer sheets, thus sustaining an injury to her left shoulder, is her own self-serving testimony. However, the claimant's testimony is challenged by statements of the only eyewitness to this incident, namely Mr. Askew. And, although not present at the hearing, Mr. Askew gave a consistent account of the incident to both his immediate supervisor and to the plant superintendent.

In summary, the weight of the credible evidence reveals that the claimant was not visibly injured at the time of the incident, she continued to work at her regular duties thereafter, and the only eyewitness to the incident stated to his supervisor and to the plant superintendent that the claimant was not struck by the falling veneer. Moreover, the claimant's surgeon testified that the claimant's condition, which later developed in her right shoulder, could have been caused by preexisting osteoarthritis. Accordingly, I find that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury on October 22, 2003, and the

compensability of this claim. Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner