

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F403904

PAULA KUETTLE, EMPLOYEE

CLAIMANT

I C CORPORATION, A SELF-INSURED EMPLOYER

RESPONDENT

**OPINION FILED SEPTEMBER 9, 2005**

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

Claimant represented by HONORABLE STEVEN R. McNEELY, Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE MATTHEW MAULDIN, 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 21, 2004.

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

1. The stipulations agreed upon by the parties are reasonable and are approved.
2. The employee-employer relationship existed on June 30, 2003, and at all other relevant times.

3. Claimant's average weekly wage was \$607.60, resulting in a compensation rate for temporary total disability of \$405.00, and a compensation rate for permanent partial disability of \$304.00.

4. Respondent has controverted this claim in its entirety.

5. Pages 38 through 44 and 46 through 49 of Claimant's Exhibit #1 should be, and hereby are, admitted into evidence.

6. Claimant did not sustain her burden of proving by a preponderance of the evidence the existence of a causal relationship between her employment and the injury. Her cervical and thoracic conditions preexisted the June 30, 2003 incident; her lumbar complaints did not arise until two months after the accident. Thus, the record fails to reflect the required causal connection.

7. Because Claimant failed to prove a compensable injury, it is not necessary to discuss her request for medical benefits, temporary total disability benefits, or an attorney's fee.

The claimant alleges that he sustained a compensable injury that is governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injury is, indeed, an injury that is covered by the Act; however, the claimant has failed to establish the

elements necessary to prove a compensable injury by a preponderance of the evidence.

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 respectfully dissent from the majority opinion affirming and adopting the Administrative Law Judge's December 21, 2004 opinion.

\_\_\_\_\_There does not appear to be any dispute that the claimant suffered a fall from a ladder at work on June 30, 2003. The cause of the incident was described not only by the claimant but by her coworker, Angela White. The occurrence of this injury was also documented by a medical report from the Morrilton Medical Clinic dated June 30, 2005, in which it was noted that the claimant injured her right ankle while climbing down a ladder. A second progress note from the same clinic dated July 2, 2003, likewise indicates that the claimant fell at work "a couple of days ago" striking her right heel, back, and neck. Both reports primarily deal with injuries to the claimant's ankle and foot. However, the July 2, progress note refers to the claimant having stiffness and muscle spasms in the "SCM."

(Possibly the sternocleidomastoid muscle, located in the upper neck, near the jaw).

\_\_\_\_\_The claimant was seen again on August 14, 2003. In a progress note prepared by Dr. Long, on a form furnished by the respondent is a statement that the claimant was complaining of upper back muscle spasms and a burning sensation "with no known precipitating factor" with a further notation that the condition was present prior to the "last visit in June." The claimant, when asked about this statement at the hearing, indicated that the doctor had erred and that this pain had not preexisted her fall in June. The claimant, in her testimony, insisted that she had told the doctor that these symptoms had been in place since her fall on June 30, 2003. That testimony is supported by the reference in the July 2, 2003 progress note with the reference of muscle spasms in the "SCM" and trapezius. Further, had the claimant been experiencing these symptoms prior to June 30, it would seem likely to me that she would have mentioned them in the doctor's visit of that date.

\_\_\_\_\_I also note that there are objective medical findings which support the existence of an injury in the claimant's thoracic and lumbar spines. An MRI of October 21, 2003 discovered an extruded disc at T7-T8 which deformed the left anterior thoracic cord at that level. In this regard, I note that the thoracic region of the spine is not an area that is normally injured by lifting incident or degenerative processes. For that reason, I believe that the claimant almost certainly injured her thoracic region in the fall of June 30, 2003. Later, MRI and CT scans also discovered that the claimant had what was described as a lateral recessed L4-L5 disc herniation with nerve root compromise. That condition was treated by Dr. Zachary Mason, a Little Rock neurosurgeon, when he operated on the claimant's lower back on February 27, 2004.

\_\_\_\_\_In my opinion, the medical record established a clear chain of causation from the claimant's fall on June 30, 2003 to the spinal abnormalities objectively verified and treated by Dr. Mason. As referred to above, the claimant fell on June 30, 2003, and sought immediate medical

attention. By July 2, 2003, the claimant was complaining of pain and muscle spasms in her neck and upper back. A few weeks later she was complaining of "burning" sensations and related symptoms. By September 2003, she was receiving conservative treatment for her spinal problems from Dr. Bruce Safman, who later referred her to Dr. Mason for neurosurgical treatment. In my opinion, the medical record clearly establishes that the symptoms the claimant complained of, and which were later surgically treated, were directly related to her fall at work. For that reason, I respectfully dissent from the majority's finding that the claimant failed to prove by a preponderance of the evidence a causal relationship between her employment and the injury.

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SHELBY W. TURNER, Commissioner