

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F308879

DEBRA PERROTTO, EMPLOYEE	CLAIMANT
BEST WESTERN, EMPLOYER	RESPONDENT
COMMERCE & INDUSTRY, CARRIER	RESPONDENT

OPINION FILED JANUARY 13, 2005

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

Claimant represented by HONORABLE J. RANDOLPH SHOCK, Attorney at Law, Fort Smith, Arkansas.

Respondent represented by HONORABLE CAROL 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 April 8, 2004.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On June 21, 2003, the relationship of employee-employer-carrier existed between the parties.
3. The claimant has failed to prove by the greater weight of the credible

evidence that she sustained a compensable injury to her back or lumbar spine on June 21, 2003. Specifically, she has failed to prove by the greater weight of the credible evidence that on that date she sustained a physical injury to her back or lumbar spine that arose out of and occurred in the course of her employment, that was caused by a specific incident, and that is identifiable by time and place of occurrence.

4. The respondents have denied the occurrence of any compensable injury to the claimant's back or lumbar spine and 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 respectfully dissent from the majority opinion. I find that the majority has inaccurately and unfairly characterized Claimant's testimony and the record. Accordingly, I find that Claimant's June 21, 2003 lumbar disc injury is compensable and causally related to her employment as a housekeeper for Respondent.

The majority has found that Claimant's testimony lacked credibility with regard to an alleged denial of preexisting back problems, a delay in receiving medical treatment, an alleged unclear historical account of onset of back symptoms in the medical records, and a lack of corroboration by Respondents' witnesses. I find that these conclusions are unfair and inaccurate characterizations of the evidence.

Claimant clearly testified that she had two prior falls that resulted in injury to her "tail bone." This is verified by medical records dated December 18, 2000. Claimant has never denied this incident. Even so, the medical records from the December, 2000 event do not show any evidence of a lumbar injury, herniated disc or symptoms such as muscle spasm or radiculopathy that Claimant now suffers. Furthermore, there is no evidence that Claimant received any treatment to her lumbar spine following the December, 2000 event.

In finding that Claimant's testimony lacked credibility because she did not receive treatment until July 6th for her injury on June 21st, the majority completely overlooked the fact that Respondents did not provide any medical benefits to Claimant despite the undisputed evidence that Claimant reported the injury to her supervisor, Ms. Perkins. Instead, it appears that Claimant was terminated on June 23rd during a meeting in which she complained of a work injury. Though the termination documents do not state that Claimant incurred a work injury, I find that this has no bearing on Claimant's credibility and her testimony that she complained of a work injury at the time of termination. Interestingly, Respondents called

witnesses who were only remotely related to this matter and did not call the employees who were identified as being present during the termination meeting or to whom Claimant testified that she had originally reported the injury. Most importantly, the medical records on July 6th state that Claimant reported that the back pain began two weeks ago. This is consistent with Claimant's testimony that she was injured on June 21, 2003.

The majority also finds that Claimant's credibility is suspect because the Respondents' witnesses did not corroborate her testimony that a hospital clerk called the hotel to seek authorization to treat Claimant. These witnesses, however, admitted that, while they were not contacted by the hospital, they did not know whether Claimant's supervisor was contacted. Again, these witnesses were remotely, if at all, related to the circumstances surrounding this case and both admitted that they had no first hand knowledge of Claimant's reports of injury or the June 23rd meeting.

In short, I find that Claimant credibly testified that she incurred a back injury while working for Respondent. The medical records support her testimony that she was injured on June 21st, two weeks before she sought

medical care. The Respondents have also failed to effectively refute that Claimant reported her injury to Ms. Perkins. Instead, their witnesses had no personal knowledge of the circumstances surrounding Claimant's injury or her termination.

For these reasons, I respectfully dissent.

SHELBY W. TURNER, Commissioner