

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.F202133

CLAUDIA L. WHIPPLE, EMPLOYEE	CLAIMANT
ST. ANTHONY'S HOSPITAL ASSOCIATION, EMPLOYER	RESPONDENT
ALTERNATIVE INSURANCE MANAGEMENT, CARRIER	RESPONDENT

OPINION FILED FEBRUARY 14, 2005

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

Claimant represented by HONORABLE EDDIE H. WALKER, JR., Attorney at Law, Fort Smith, Arkansas.

Respondent represented by HONORABLE WALTER A. MURRAY, 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 November 26, 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 establish an injury with medical evidence supported by objective findings are required by the Arkansas Workers' Compensation law.

4. The claimant failed to prove by a preponderance of the evidence the elements necessary to establish a compensable 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 dissent from the Majority opinion because claimant's acute injury is supported by objective findings.

The claimant alleges she suffered a compensable back injury on February 18, 2002, while employed as a nursing assistant at the respondent's medical facility. The respondent initially accepted the claim as compensable but then later controverted it in its entirety. After a hearing, the Administrative Law Judge found that the claimant did not establish that there were any objective findings to support the existence of an injury. On that basis, the Administrative Law Judge found that the claimant could not establish the occurrence of a compensable injury and denied

the claim.

In my opinion, the Majority, by adopting the Administrative Law Judge's opinion, has failed to consider certain medical findings contained in the record. According to the claimant, she was injured on February 18, 2002 while assisting a very large patient with sitting up on bed. When the bed unexpectedly rolled, the patient's entire weight was thrown up on her. She stated that she had a sudden onset of severe pain. The claimant promptly notified her immediate supervisor who directed her to obtain medical treatment.

In an emergency room note dated February 18, 2002, the claimant explained to the emergency room staff how the injury occurred and the symptoms she was suffering. In that report, the claimant was noted be suffering from "mild to moderate generalized back muscle tension." (Emphasis added).

Muscular tension is defined in Taber's Cyclopedic Medical Dictionary, 15th Edition, as "condition in a muscle in which fibers tend to shorten and thus perform work or release heat." The presence of this symptom is clearly an objective finding, outside of claimant's control, which the doctor duly noted and set out in the emergency room report.

A second objective finding was also documented by another of the claimant's treating physicians. In a report prepared by Dr. Rex Russell, dated July 24, 2002, the doctor reviewed a radiology report setting out the findings of an MRI dated May 2, 2002, less than three months after claimant's job related injury. In his report, Dr. Russell states that his examination of the claimant was "compared with the MRI studies done on 5/2/2002 which showed mild bulging of the annulus at the L4 level. The MRI scan otherwise is normal." (Emphasis added). In making this finding, Dr. Russell was obviously indicating that the bulging annulus was abnormal since the report was "otherwise" normal.

Dr. Russell's comment is significant when the claimant's past medical condition is reviewed. There is no dispute that prior to the claimant's job related accident, she had a long standing back problem. However, the lumbar MRI performed after claimant's work injury revealed an abnormality at L4 that was not present in the MRIs performed prior to her February, 2002 injury. Clearly, any condition present after February, 2002 would have arisen as a result of her job related accident.

For these reasons, I find that claimant has supported her claim for compensability with objective medical evidence. Therefore, I find that the Administrative Law Judge's decision finding the claim not to be compensable should be reversed and that the case be remanded to determine the periods in which the claimant would be entitled to receive temporary total disability benefits as well as the reasonableness and the necessity of the medical treatment the claimant has received due to her compensable injury. Accordingly, I dissent.

SHELBY W. TURNER, Commissioner