

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F312436

PAM WILLIAMS,
EMPLOYEE

CLAIMANT

DOLLAR GENERAL,
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED MAY 11, 2005

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

Claimant represented by HONORABLE TIMOTHY MYERS, Attorney at
Law, Fayetteville, Arkansas.

Respondents represented by HONORABLE BETTY DEMORY, Attorney
at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

This case comes on for review by the Full
Commission on appeal by respondents from an opinion filed
herein by an Administrative Law Judge on June 2, 2004.

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

1. The Arkansas Workers' Compensation
Commission has jurisdiction of the
within claim.
2. The relationship of employee-
employer existed between the
parties on October 1, 2003.
3. The parties' stipulation that
claimant earned a sufficient
average weekly wage to entitle her

to the maximum compensation rate of \$440.00 for total disability and \$330.00 for permanent partial disability benefits is also hereby accepted as fact.

4. Claimant met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right knee while employed by respondent on or about October 1, 2003.
5. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable right knee injury.
6. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to temporary total disability benefits beginning November 16, 2003 and continuing through December 30, 2003.
7. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

We have carefully conducted a de novo review of the entire record herein, and it is our opinion that the decision of the Administrative Law Judge is correct 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.

We therefore affirm the June 2, 2004 opinion of the Administrative Law Judge, including all findings of fact

and conclusions of law therein, and adopt the opinion as the decision of the Full Commission. All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I respectfully dissent from the majority opinion finding that the claimant sustained a compensable right knee injury on October 1, 2003 for which she is entitled to temporary total disability benefits from November 12, 2003, through January 9, 2004, and medical benefits. Based upon my de novo review of the entire record, I find that the claimant has failed to meet her burden of proof. Accordingly, I would reverse the decision of the Administrative Law Judge.

The claimant contends that she sustained an injury to her right knee on October 1, 2003, when a wall of boxes fell on her, trapping her on the floor. The claimant's deposition testimony contradicts her hearing testimony with regard to this accident. For instance, at her deposition, the claimant testified that she did not report the accident to her supervisor, Tom O'Connell, until a week after the accident occurred. However, at the hearing, the claimant testified on direct examination that she reported the accident to Mr. O'Connell via voice mail on the same evening as the accident. Mr. O'Connell denied receiving a voice mail from the claimant in this regard. The testimony of claimant's witness, Michael Sanderson, also contradicts the claimant's deposition testimony. Mr. Sanderson testified

that when he reported to work on the evening the accident occurred, the claimant showed him where she fell and that the boxes still remained on the stockroom floor. Mr. Sanderson further testified that he helped the claimant restock the boxes that evening. Mr. Sanderson's testimony is in clear contradiction of the claimant's deposition testimony wherein she testified that she did not contact Mr. Sanderson to come in and cleanup the boxes; he did not ever assist with any of the boxes from the incident being cleaned up or restacked; and, that no other employees helped cleanup the boxes from the incident.

The burden of proof rests upon the claimant to prove the compensability of her claim. Ringier America v. Comles, 41 Ark. App. 47, 849 S.W.2d 1 (1993). There is no presumption that a claim is compensable, that the claimant's injury is job-related or that a claimant is entitled to benefits. Crouch Funeral Home v. Crouch, 262 Ark. App. 417, 557 S.W.2d 392 (1977); O.K. Processing, Inc. v. Servold, 265 Ark. 352, 578 S.W.2d 224 (1979). The party having the burden of proof on the issue must establish it by a preponderance of the evidence. Ark. Code Ann. § 11-9-704(c) (2) (Repl. 1996). In determining whether a claimant has sustained her burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to

either party. Ark. Code Ann. § 11-9-704; Wade v. Mr. C Cavanaugh's, 298 Ark. 363, 768 S.W.2d 521 (1989); and Fowler v. McHenry, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

The findings of the Administrative Law Judge on issue of credibility are not binding on the Commission. Roberts v. Leo-Levi Hospital, 8 Ark. App. 184, 649 S.W.2d 402 (1983); Linthicum v. Mar-Bax Shirt Co., 23 Ark. App. 26, 741 S.W.2d 275 (1987). It is the exclusive function of the Commission to determine the credibility of the witnesses and the weight to be given their testimony. Johnson v. Riceland Foods, 47 Ark. App. 71, 884 S.W.2d 626 (1994). Furthermore, the Commission is not required to believe the testimony of the claimant or other witnesses, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. Morelock v. Kearney Co., 48 Ark. App. 227, 894 S.W.2d 603 (1995).

In my opinion, the claimant's testimony simply is not sufficiently credible to support a finding that her injury arose out of and in the course of her employment. Mooney v. Monday & Associates, Full Commission Opinion filed August 15, 1996 (E4104794); Riley v. Craighead Nursing Center, Full Commission Opinion filed January 13, 1998 (E608290 and E608291); Anderson v. Douglas & Lomason Co., Full Commission Opinion filed December 12, 1998 (E700104);

and Arnold v. Dino's, Inc., Full Commission Opinion filed August 1, 2002 (F001514). The claimant allegedly sustained an unwitnessed injury. The claimant's testimony under oath is inconsistent with regard to when and how she reported her alleged injury to her supervisor. Furthermore, the claimant offered testimony from a co-worker that is clearly inconsistent with the claimant's account of cleaning up the mess from the accident all by herself.

Accordingly, when I weigh all the evidence of record, I cannot find that the claimant has proven by a preponderance of the credible evidence that she sustained a compensable injury to her right knee on or about October 1, 2003, as the evidence is inconsistent and contradictory.

Therefore, I respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner