

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F302839

PATRICIA K. CURTIS, EMPLOYEE	CLAIMANT
ACTRONIX, INC., EMPLOYER	RESPONDENT
THE HARTFORD, INSURANCE CARRIER	RESPONDENT

OPINION FILED OCTOBER 24, 2006

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

Claimant represented by the HONORABLE FREDERICK S. "RICK" SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by the HONORABLE TOM HARPER, JR., Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed October 20, 2005. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. On February 4, 2003, the claimant received admittedly compensable injuries to her left shoulder and lower back.
2. Compensability of the claimed neck injury, depression, and related benefits have been denied and are fully controverted by respondents.

3. If Mr. Curtis were called to testify, he would corroborate Mrs. Curtis' testimony.

4. The claimant has established by a preponderance of the evidence that she sustained a compensable injury to her neck on February 4, 2003.

5. The claimant has established by a preponderance of the evidence that a neurosurgical referral for her neck injury is reasonably necessary medical treatment for that injury.

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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the October 20, 2005 decision 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 on appeal.

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 must respectfully dissent from the majority opinion finding that the claimant proved by a preponderance of the evidence that she sustained a compensable neck injury on February 4, 2003. Based upon

my de novo review of the record, I find that the claimant has failed to meet her burden of proof.

The claimant sustained admittedly compensable injuries to her left shoulder and low back on February 4, 2003. The claimant was pushing a barrel full of power cables when it caught on the jacket of a cable or a crack on the floor. The claimant fell to the floor with the barrel falling on her. The claimant sought treatment at the emergency room and was eventually referred to Dr. Thomas Knox, an orthopaedic surgeon in Mountain Home. Dr. Knox initially diagnosed the claimant with a left rotator cuff tear and ordered a cervical spine MRI on February 19, 2003. The claimant was also diagnosed with a herniated nucleus pulposus of the lumbar spine. At this time, the claimant contends that she sustained a compensable cervical injury at the time of the incident.

Dr. Knox initially diagnosed the claimant with a left shoulder rotator cuff tear and ordered a cervical spine MRI on February 19, 2003. The claimant underwent the MRI which the radiologist, Dr. Tullis, as well as Dr. Knox, read as normal. Dr. Knox also examined the claimant on February 24, 2003, and opined that the claimant had a normal cervical examination. Dr. Knox ordered a lumbar MRI on February 24, 2003, which

reflected a left-sided disc herniation at L4-5. The claimant was referred to Dr. Gregory Ricca, who performed a micro diskectomy of the L4-5 on the left on October 23, 2003. He released the claimant to Dr. Knox for treatment of her left shoulder on December 11, 2003.

Dr. Knox had the claimant evaluated by Dr. Safwan Sakr, a rheumatologist, on March 4, 2004. On June 9, 2004, Dr. Knox performed arthroscopic surgery on the claimant's left shoulder to repair her rotator cuff. Dr. Knox released the claimant on September 4, 2004, and referred her again to Dr. Sakr for evaluation and treatment of neck pain. Dr. Sakr ordered another cervical MRI on October 4, 2004. It reflected a progression of the claimant's cervical degenerative disc disease.

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. §11-9-102(4) (A) (i) (Repl. 2002), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which

required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In my opinion, the majority used impermissible speculation and conjecture to come to the conclusion that the claimant sustained a compensable injury. Conjecture and speculation, even if plausible, cannot take the place of proof. Ark. Dept. of Correction v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991). Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979). Arkansas Methodist Hospital v. Adams, 43 Ark. App. 1, 858 S.W.2d 125 (1993). The abnormalities that are reflected on the October 5, 2004, MRI were performed one year and eight months after the alleged injury. The only abnormality identified on the 2004 MRI

is progressive cervical degenerative disc disease. The cervical MRI performed on February 19, 2003, only two weeks after the incident of February 4, 2003, reflected minor degenerative changes without significant abnormality. Contemporaneously with the claimant's injuries from her fall, there was absolutely no objective evidence of a cervical injury. This is corroborated by Dr. Knox who, in his report of February 24, 2003, stated, "her MRI scan of cervical spine is normal ... the patient obviously has shoulder bursitis with a normal cervical evaluation."

Moreover, on March 4, 2004, there was no objective evidence of a cervical injury, only degenerative changes. Dr. Knox requested that the claimant be evaluated by Dr. Sakr, a rheumatologist, for neck pain. Dr. Sakr's report also notes that the claimant's MRI of her cervical spine was normal. His impression was "neck pain of muscular origin." Furthermore, Dr. Tullis, the radiologist, compared the MRI's of February 19, 2003, and October 5, 2004. In a report dated November 4, 2004, Dr. Tullis stated that the 2003 study reflected degenerative changes and the 2004 study demonstrated a little more degenerative change which had progressed a little from the 2003

study, especially at C6-7. Dr. Tullis said that the apparent change might be due to the fact that the later scan was done on a higher resolution scanner at the hospital rather than the office scanner. It is of interest to note that Dr. Ricca and Dr. Knox did not question the resolution of the findings on the claimant's lumbar MRI which was performed five days later than the cervical MRI on the exact same equipment. Dr. Tullis did not question the resolution and/or validity of the 2003 MRI but only suggested higher resolution of the 2004 as merely a possibility. Simply put, I cannot find that the claimant proved by a preponderance of the evidence that she sustained a compensable injury to her cervical spine on February 4, 2003. In my opinion, the claimant has failed to meet her burden of proof. Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner