

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F210280

ANNA L. HILDEBRAND, EMPLOYEE	CLAIMANT
LENNOX INDUSTRIES, INC., EMPLOYER	RESPONDENT
AMERICAN MOTORISTS INSURANCE CO., INSURANCE CARRIER	RESPONDENT

OPINION FILED MARCH 14, 2006

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

Claimant represented by the HONORABLE JAMES W. STANLEY, JR., Attorney at Law, North Little Rock, Arkansas.

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

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed September 13, 2005. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Workers' Compensation Commission has jurisdiction of this claim in which an employer-employee-carrier relationship existed on October 30, 2001, at which time the claimant sustained a compensable injury to her head and shoulders at a compensation rate of \$328.00/\$246.00.

2. The claimant has proven by a preponderance of the credible evidence of record, that she remains symptomatic as a result of her

compensable injury and in need of continuing medical treatment.

3. The claimant has proven by a preponderance of the credible evidence that the treatment proposed by Dr. Ward is causally related to the claimant's compensable injury.

4. Respondents are directed to pay Dr. Ward's medical expenses within thirty days of receipt pursuant to Rule 30.

5. The respondents are directed to pay the court reporter's fees and expenses associated with transcribing this hearing within thirty days pursuant to Commission Rule 20.

6. This claim has been controverted and the claimant's counsel is entitled to the maximum attorney's fees to be paid in accordance with A.C.A. § 11-9-715, § 11-9-801, and WCC Rule 10.

Pursuant to the Full Commission decisions of Coleman v. Holiday Inn, (November 21, 1990) (D708577), and Chamness v. Superior Industries, (March 5, 1992) (E019760), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by the respondent, directly to the claimant's attorney.

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 September 13, 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. The Full Commission would note that a clerical error exists on pages 3 and 4 of the Administrative Law Judge's opinion and order where Dr. Hart was referenced in place of Dr. Ward.

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's opinion finding that the claimant was entitled to additional medical treatment. Based upon my de novo review of the record, I find that the claimant has failed to meet her burden of proof.

In my opinion, a preponderance of the evidence does not demonstrate that the claimant is entitled to additional medical treatment recommended by Dr. Ward. The medical records and the testimony demonstrate that the claimant has been evaluated and no treatable condition has ever been identified. The claimant underwent several diagnostic tests for her complaints all of which came back negative. The claimant's conditions have been thoroughly evaluated and she was released from care for her neck complaints by

Dr. Schlesinger. The claimant was also released from her head injury complaints by the neurologist, Dr. Rutherford.

The evidence demonstrates that the claimant injured her cervical and lumbar spines in September 2002, in a motor vehicle accident. She also has undergone gallbladder surgery and she fell at the doctor's office after her compensable injury. Dr. Ward stated that the claimant had symptoms of Dystonia. However, the report of Dr. Ward also notes that these are subjective symptoms that are typical of Dystonia. In my opinion, it is conjecture and speculation to conclude that the claimant is in need of additional medical treatment. 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). Accordingly, I must respectfully dissent from the majority's opinion finding that the claimant is entitled to additional benefits.

KAREN H. MCKINNEY, Commissioner