

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F505889

YOLANDA L. JORDAN, EMPLOYEE	CLAIMANT
SELECT MEDICAL CORP., EMPLOYER	RESPONDENT
TRAVELERS INDEMNITY CO., INSURANCE CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 18, 2006

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

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

Respondents represented by the HONORABLE ROBERT  
MONTGOMERY, 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 April 13, 2006. In said  
order, the Administrative Law Judge made the following  
findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation  
Commission has jurisdiction of this claim.

2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.

3. The claimant has proven by a preponderance of the evidence that she sustained an injury to her elbow on May 26, 2005, arising out of and in the course of her employment; and that her injury was caused by a specific incident identifiable by time and place of occurrence.

4. The claimant has proven by a preponderance of the evidence that her elbow injury caused internal physical harm to the body requiring medical services; and that the existence and extent of her elbow injury is established by medical evidence supported by objective findings.

5. The claimant has therefore proven by a preponderance of the evidence that she sustained a compensable injury to her elbow on May 26, 2005.

6. The claimant has proven by a preponderance of the evidence that the medical treatment she has received to date has been reasonably necessary in connection with her compensable injury.

7. The claimant has proven by a preponderance of the evidence that she remained in her healing period through at least October 24, 2005.

8. The claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability benefits from May 28, 2005, through September 5, 2005, exclusive of any time worked during that period.

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 April 13, 2006 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.

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OLAN W. REEVES, Chairman

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SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

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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 injury to her elbow on May 26, 2005. In my opinion, the claimant has failed to meet her burden of proof.

The claimant worked for the respondent employer as a CNA. The claimant testified that on May 25, 2005, she was assisting with the moving of a large patient when she hurt her arm. The claimant stated that she sat down for a about thirty minutes and applied ice to her arm. The claimant finished her shift and did not

seek any medical treatment until May 28, 2005, when she sought treatment at the emergency room at Baptist Hospital. The emergency room notes record that the claimant complained of pain in her arm and inability to lift her right arm for the prior four days. The notes also denied that the claimant had an injury. The x-rays of the elbow were negative and the claimant was diagnosed with tennis elbow and released. The claimant was ultimately referred to Dr. David Rhodes who diagnosed the claimant with a partial tear of the right extensor tendon after an MRI scan. Dr. Rhodes performed surgery to repair the tendon tear on July 25, 2005.

The claimant's testimony contains several inconsistencies which, in my opinion, cannot be ignored. For example, when the claimant was cross-examined on the witness stand during the hearing, she could not remember the day of the week nor the time this alleged injury supposedly occurred. The claimant answered "I don't recall the time. No, I don't." She also testified that she injured her arm while worked with several other co-workers moving a patient. However, it is of note that the claimant failed to call any of these witnesses to substantiate her story. It is clear that the burden of

proof is on the claimant to prove by a preponderance of the evidence that she sustained a compensable injury.

The claimant also testified that she did not seek medical attention for several days after this alleged incident on May 25, 2005. However, the claimant went into work on May 26, 2005, to pick up her pay check. She met with Ms. Eula Mitchell, the Human Resources coordinator, who she talked with for several minutes about going to Branson for the weekend. Ms. Mitchell testified that the claimant did not appear to be injured nor did she mention this alleged injury that she had the night before to Ms. Mitchell.

Moreover, the medical evidence also contradicts the claimant's testimony. When the claimant reported to the Baptist Hospital emergency room, she denied any injury to her arm. There is no mention of an on-the-job injury or an episode of moving a large patient. In light of the fact that the claimant is a Certified Nursing Assistant and has familiarity with medical records, it is of special note that she failed to mention this to the personnel at Baptist Hospital.

Therefore, in light of this evidence, I cannot find that the claimant proved by a preponderance of the evidence that she sustained a compensable injury on May

26, 2005. Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority opinion awarding benefits to the claimant.

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KAREN H. MCKINNEY, Commissioner