

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F304373 & F304374

FERN K. RICHMOND, EMPLOYEE	CLAIMANT
BAXTER HEALTHCARE, INC., EMPLOYER	RESPONDENT
LUMBERMENS MUTUAL CASUALTY CO., CARRIER	RESPONDENT

OPINION FILED JULY 5, 2006

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

Claimant represented by HONORABLE FREDERICK SPENCER, Attorney at Law, Mountain Home, Arkansas.

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

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed March 1, 2006.

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

1. The stipulations agreed upon by the parties are reasonable and are approved.
2. The employee-employer-carrier relationship existed at all relevant times.

3. Claimant's average weekly wage in November, 2001 was \$439.20; therefore, Claimant's temporary total disability rate is \$293.00, and her permanent partial disability rate is \$220.00.

4. Respondents controvert both claims.

5. Because Claimant did not present the authors of the affidavits marked Exhibit "A" and Exhibit "B," attached to her Brief in support of her Motion to Recuse, those affidavits will not be admitted into evidence, upon Respondents' objection to the denial of their right of cross-examination.

6. I find that Claimant's Motion to Recuse should be, and hereby is, denied. In other cases, the Commission has rejected the arguments made by Claimant in this case concerning the constitutionality of the Commission. Further, the rule of necessity mandates that I remain on this claim.

7. Claimant did not sustain her burden of proving by a preponderance of the evidence that she suffered a compensable gradual low back injury in November, 2001. The medical records document Claimant's preexisting low back problem, including a specific incident not related to her work that harmed her low back in May of 2000. Further, Claimant suffered from "long-standing" degenerative disc disease. Claimant thus failed to prove that her alleged

compensable injury is the major cause of her disability or need for treatment; the statements of Dr. Ferguson are inconclusive on this point.

8. Claimant did not sustain her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right ankle on June 4, 2002. Claimant's injury was idiopathic in nature: she has a history of twisting or turning her ankles and the testimony indicates that her ankle simply "gave way" on the date in question. There is no proof that conditions related to Claimant's employment contributed to the risk of injury or aggravated the injury.

9. Because Claimant failed to prove any compensable injury, it is not necessary to discuss the remaining issues in this case.

The claimant alleges that she sustained compensable injuries that are governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injuries are, indeed, injuries that are covered by the Act; however, the claimant has failed to establish the elements necessary to prove compensable injuries by a preponderance of the evidence.

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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.

CONCURRING AND DISSENTING OPINION

I respectfully concur in part and dissent without opinion in part from the Majority's decision affirming and adopting the Administrative Law Judge's March 1, 2006 opinion.

I concur with the Majority's decision denying admittance into evidence of the affidavits marked Exhibit "A" and Exhibit "B" which were attached to claimants Motion to Recuse. I, also, concur with the Majority's decision to deny claimant's Motion to Recuse.

_____I respectfully dissent without opinion from the Majority's decision affirming the Administrative Law Judge's March 1, 2006 opinion denying compensability of claimant's gradual onset low back injury in November, 2001, and her June 4, 2002, right ankle injury.

SHELBY W. TURNER, Commissioner