

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F601874

MARCIA FERGUSON, EMPLOYEE	CLAIMANT
DENVER ROLLER, INC., EMPLOYER	RESPONDENT
UNION INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 28, 2007

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

Claimant represented by HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE WILLIAM C. FRYE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed November 8, 2006.

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

1. There was a compensable wrist injury on February 17, 2006.
2. The compensation rate is \$109.

3. Temporary total disability benefits were paid through May 30, 2006, totaling \$1,651.

4. A 5% permanent impairment rating was accepted and paid, totaling \$748.01

5. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable hip injury on February 17, 2006.

6. The preponderance of evidence supports the claimant sustained an idiopathic fall rather than an unexplained fall.

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

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 Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's decision that the claimant sustained an idiopathic injury and was therefore denied medical and temporary total

disability benefits. Based upon a de novo review of the record in its entirety, I find the claimant suffered a compensable work-related hip injury.

_____By affirming the Administrative Law Judge's opinion, the Majority found that the claimant's hip injury was caused by an idiopathic condition and that the claimant's hip did not hit anything when she fell, and therefore, the injury is not compensable. The Majority's findings are simply not consistent with the opinions of the claimant's doctors or with the testimony of the claimant.

Courts generally have held that when a claimant suffers from an unexplained injury it is compensable; whereas when a claimant suffers from an idiopathic injury it is not. Little Rock Convention & Visitors Bureau v. David Pack, 60 Ark. App. 82 (1997); 959 S.W.2d 415(1997). An idiopathic injury is an injury that is personal in nature or peculiar to the individual sustaining the injury. Id; Kuhn v. Majestic Hotel, 324 Ark. 21, 918 S. W. 2d 158(1996). As an idiopathic injury is not related to the employment in order for it to be compensable there must be conditions

related to the employment which increase the dangerous effect of the fall. Leon B. Crawford v. Single Source Transportation Fidelity & Casualty Insurance Company, 87 Ark. App. 216, 189 S.W.3d 507 (2004), citing Little Rock Convention & Visitors Bur., supra. See also, ERC Contractor Yard & Sales v. Robertson, 60 Ark. App. 310, 961 S.W.2d 36 (1998).

In the present case, the claimant testified that she could not explain what caused her fall. She was simply standing at the copy machine, turned, and fell, hitting the metal filing cabinet on the way down. The respondents argue that the fall was idiopathic in nature due mainly to the claimant's history of falling. The claimant did not dispute that in December of 2005 she had reported to Dr. Deborah Quade that she had fallen backwards into the tub two times. The claimant explained that she had just lost her balance and that she had been taking Hydrocodone and Neurontin. The Hydrocodone and Neurontin seemed to be affecting the claimant's balance in December of 2005. As such, it is evident that the claimant's falls in 2005 were due in part

to the claimant's own balance issues in connection to her medications. In the present case, the claimant could not provide a reason for her fall. As such, it was unexplained fall, but it was not personal in nature.

Furthermore, the claimant testified that she fell, she hit the metal filing cabinet with her left shoulder and her right leg extended behind her. The claimant's testimony reveals that the room in question appears to be a small room with a wall of filing cabinets. Yet because of the way that the claimant fell, I believe it is evident that had the claimant not been trapped in by the filing cabinets, she may have been able to fall without her right leg going behind her. As such, it is evident that these conditions increased the dangerous effect of the fall.

Additionally, there is no doctor's opinion contained anywhere in the record which opines that the claimant's fall was idiopathic. As such, the assertion that the claimant's fall was in any way peculiar to the claimant is sheer speculation. 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).

In conclusion, it is clear that the claimant sustained a compensable injury to her hip when she fell at work on February 17, 2006. The Majority's decision that the injury was idiopathic in nature is based upon sheer speculation, not the facts presented. As such, I find that the claimant should be awarded medical and temporary total disability benefits related to her hip injury.

_____ For the aforementioned reasons, I respectfully dissent.

PHILIP A. HOOD, Commissioner