

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F601313

LINDA HOSEY,  
EMPLOYEE

CLAIMANT

HOWARD MEMORIAL HOSPITAL,  
SELF-INSURED EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,  
TPA, CARRIER

RESPONDENT

OPINION FILED MAY 29, 2007

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

Claimant represented by the HONORABLE JASON L. HORTON,  
Attorney at Law, Texarkana, Texas.

Respondents represented by the HONORABLE MICHAEL E.  
RYBURN, 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 January 18, 2007. 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 and  
recited herein are reasonable and hereby accepted  
as fact.

3. The claimant has proven by a preponderance of the evidence that she sustained a compensable left hip injury on February 2, 2006.

4. Claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability benefits from February 2, 2006 through April 16, 2006.

5. Claimant has proven by a preponderance of the evidence that respondents are responsible for all medical treatment related to the claimant's compensable left hip injury.

6. The claimant's fall on February 2, 2006 was not idiopathic.

7. The claimant is entitled to the maximum attorney's fee allowed by Arkansas Law consistent with the findings herein.

8. Respondents are entitled to a credit or offset for benefits previously paid by the employer's group health care plan, as well as an offset for short-term disability or accidental sickness benefits previously paid pursuant to A.C.A §11-9-411.(Repl. 2002)

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 January 18, 2007 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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PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

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DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that the claimant sustained a compensable injury on February 2, 2006, when she fell at work. Based upon de novo review of the entire record, I find that the claimant has failed to meet her burden of proof.

The facts in this claim are highly disputed. What is known is that the claimant fell at work on February 2, 2006, in the hallway near the Auxiliary station and that she had a five dollar bill and a J C Penney statement in her hand. The Emergency Room Nursing Assessment Page states, "62 yof to ER via stretcher. Pt was walking to gift shop in Hospital for envelopes shoe came off fell ...". The claimant provided a recorded statement to the claim's adjuster just days after the accident. When asked where she was going when she fell, the claimant stated that she was going first to the Auxiliary to buy an envelope for personal business, then she was going to payroll, to see if it was ready to be picked up. The claimant admitted at the hearing that she had the money and a bill in her hand when she fell; however, she testified that she was first going to check

the mail, then on her way back to her desk she was going to stop by the Auxiliary.

The layout of the hospital is such that in order for the claimant to go from her desk to pick up payroll or the mail, she would have to pass by the Auxiliary. When the accident first occurred the only explanation the claimant provided to her co-workers was that she was going to the Auxiliary to buy an envelope when she fell. However, when the claim's adjuster called to take the claimant's recorded statement, the claimant elaborated more on her intentions that day by stating that she intended to attend to her personal business first, e.i. purchase an envelope, then she was going to check on payroll. Prior to the hearing the parties disclosed the identity of their witnesses, thus the claimant became aware that Gayla Lacefield would be called to testify by the respondents. As Ms. Lacefield was going to testify about the hospital's payroll policy, and the fact that the payroll was never made available until after 1:00 p.m. because the money was not transferred to the payroll account until 1:00 p.m., the claimant's recorded statement regarding her intended work related purpose for her trip down the hall came unraveled since her injury happened sometime between 12:00 and 12:30. Conveniently, the claimant's story

changed at the hearing. Now, as luck would have it, the claimant testified that she wasn't going to check the payroll, but was going to check the mail first, then she was going to stop by the Auxiliary on her way back to her desk, making the purpose of her stroll down the hall work related in nature first and personal in nature second. However, logic fails here as well. At the time of her fall, the claimant had in her possession both the money to purchase the envelope and the statement to be mailed. If the claimant had only intended to buy the envelope and not mail the statement, then she would not have needed the statement with her on her trip down the hall. But since the claimant actually took the statement with her when she went to purchase the envelope, it is only logical that the claimant intended to also mail that statement at that time. In fact, the claimant admitted as much on direct examination.

Q. And your purpose with that bill and that money was to go and buy an envelope to put the bill in and send it in. Is that right?

A. Yes, sir, to mail that afternoon. Yes, sir.

It simply does not make sense for the claimant to carry the statement with her if she did not intend to mail it at that time. Moreover, it simply does not make sense for the claimant to walk passed the Auxiliary with the

money and statement in her hand, go check the mail, walk back to the Auxiliary with the mail in her hand to purchase the envelope, stuff the statement in the envelope, and return to the mail to mail her statement. Thus, when the claimant's statements about her activities are considered without giving the claimant the benefit of the doubt, I cannot find that the claimant has proven by a preponderance of the evidence that she was performing employment services at the time of her injury. There is simply no other logical explanation with regard to the claimant's activities at the time of her accident than to conclude that the claimant was attending to her personal business and was not directly or indirectly advancing her employer's interest.

Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority opinion.

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KAREN H. MCKINNEY, Commissioner