

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F601311

UFELIA ALVARADO, EMPLOYEE	CLAIMANT
MISSISSIPPI COUNTY ECONOMIC OPPORTUNITY, EMPLOYER	RESPONDENT NO. 1
AIG CLAIMS SERVICE, INC., INSURANCE CARRIER	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY	RESPONDENT NO. 2

OPINION FILED JULY 21, 2008

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

Claimant represented by the HONORABLE DONALD E. PREVALLET, Attorney at Law, Blytheville, Arkansas.

Respondents No. 1 represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE JUDY W. RUDD, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed August 15, 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 over this claim.

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

3. The claimant has failed to prove, by a preponderance of the evidence, that she sustained a compensable injury arising out of and during the course of her employment with the Mississippi County Economic Opportunity Commission.

4. The claimant has failed to prove, by a preponderance of the evidence, that her alleged injuries, need for treatment, and disability are in any way causally related to a work-related incident on March 29, 2004.

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.

The claimant alleges that she 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 covered by the Act; however, the claimant has failed to establish the elements necessary to prove the compensable injury by a preponderance of the evidence.

Therefore we affirm and adopt the August 15, 2007 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 opinion. The majority, by affirming and adopting the Administrative Law Judge, finds that the claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her left shoulder while employed by the respondent. After a de novo review of the record, I find that the claimant has met her burden of proof by a preponderance of the evidence that she sustained a compensable specific incident injury to her left shoulder on March 29, 2004 and, therefore, I must respectfully dissent.

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. §11-9-102(4) (A) (i) (Repl. 2002), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (4) (D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

The claimant credibly testified that on March 29, 2004, she was returning from the respondent-provided lunch when she tripped on some electrical cords set down for the training meeting she was attending. The claimant testified that she hit her left shoulder on the wall as she was falling. The medical records show that the claimant required medical attention immediately after she fell. An ambulance was called to the training

session to take the claimant to the Baptist Memorial emergency room in Blytheville. At the emergency room, although concerned about the claimant's high blood sugar levels and reports of blacking out, the doctor also noted neck and back injuries and prescribed Flexeril, a drug used to treat muscle spasms. Dr. Yao's medical report dated April 20, 2007, relates the left shoulder injury to the March 29, 2004 work incident:

Ms. Alvarado has had ongoing L shoulder pain since her 3/29/04 work injury. She states that she had no shoulder problems prior to that injury. She has had no new injuries to her left shoulder since the 3/20/04 [sic] injury. Her left shoulder pain therefore appears related to the 3/29/04 work injury.

Based on the claimant's credible testimony and Dr. Yao's medical records, I find the claimant has met her burden of proving by a preponderance of the evidence that she sustained a compensable shoulder injury at work on March 29, 2004.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner