

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F410095

DONNA BLEVINS,  
EMPLOYEE

CLAIMANT

KENTUCKY FRIED CHICKEN,  
EMPLOYER

RESPONDENT

COMMERCE & INDUSTRY INSURANCE,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED JUNE 27, 2008

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

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

Respondents represented by the HONORABLE MELISSA WOOD,  
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 May 21, 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 the within claim.
2. The employee-employer-carrier relationship existed on or about September 14, 2004, and at all other relevant times.
3. The claimant failed to prove by a preponderance of the credible evidence she suffered a right

shoulder injury while working for the respondent on or about September 14, 2004.

4. The claimant's Motion to Recuse is denied and her constitutional challenges are found to be without merit pursuant to Long v. Wal-Mart Stores, Inc., \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Ark. CT. App. Feb. 21, 2007).

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 May 21, 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.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood concurs, in part, and dissents, in part.

**CONCURRING AND DISSENTING OPINION**

The majority has affirmed and adopted an Administrative Law Judge's decision denying the claimant's request for the recusal or disqualification of the Judge and Commission and finding that the claimant did not meet her burden of proof in order to establish her entitlement to additional benefits. While I concur with the denial of the request for recusal, I must respectfully dissent from the balance of the Opinion.

The claimant has alleged that she sustained a job-related injury to her shoulder and neck on or about September 14, 2004. At the time of this accident, the claimant was employed in the respondent's restaurant and with duties of maintaining the food bar. She testified

that she slipped on a wet, greasy floor and fell, catching her arm on the food bar. She stated that she struck her hip on the floor and strained her neck and shoulder. She went on to testify that the business owner, John Wooten, helped her to her feet and made a joking comment about her fall.

The claimant was initially seen at the North Arkansas Regional Medical Center emergency room on September 7, 2004. The Judge found that the emergency room note of that date made no mention of the shoulder injury. However, the note does appear to say that the claimant stated, "Right shoulder back injury." The Administrative Law Judge concluded that this reference indicated an injury occurring eight to ten years ago. However, the note is poorly organized and most of it is illegible. I disagree with the Administrative Law Judge's interpretation that the reference to a past injury was referring to the claimant's current right shoulder injury. Medical records introduced by the respondent, as well as the claimant's testimony, indicate that the claimant was seen for a back injury in 1997. No reference occurs in the claimant's prior medical reports regarding a past shoulder injury.

After being treated in the emergency room, the claimant was not directed to obtain any particular follow-up treatment. However, she continued to suffer from pain and related problems as a result of her fall at work. Consequently, after making requests to her employer, she was directed to Dr. Victor Chu at the Eagle Heights Clinic in Harrison, Arkansas. In his treatment note of October 11, 2004, Dr. Chu reports a history of job-related accidents and states that x-rays he performed of her shoulder revealed spur formations and that she "may have a small tear." As a result of his x-ray, he directed that the claimant receive further treatment from an orthopedic surgeon. However, the respondent refused to provide this treatment and, consequently, the claimant has been without significant medical treatment since that time.

The Administrative Law Judge, whose Opinion the majority is adopting, specifically found that the accident the claimant described occurred. However, the Administrative Law Judge denied benefits, concluding that the medical evidence did not establish that the claimant injured her shoulder in the fall.

After a de novo review of the record, I find that the claimant's testimony, when taken in conjunction

with the medical records, demonstrates that she reported a shoulder injury to the emergency room personnel the day following her accident. Considering that the Administrative Law Judge found that the accident occurred, I am disturbed by the majority's refusal to provide the claimant further medical treatment for an injury sustained in an accident they have found to be job-related.

I find that the evidence in this case establishes that the claimant injured herself at work. However, the majority is refusing to provide her appropriate medical treatment. Neither the majority, nor the Administrative Law Judge whose findings they are adopting, state any clear reason why further medical treatment is not appropriate. The respondent argues that the claimant cannot provide sufficient medical evidence to establish the occurrence of a compensable injury. However, to a great degree, the limited medical evidence in this case is because the respondent refuses to provide the claimant medical treatment, in spite of the findings of Dr. Chu. For the majority to allow the respondent to avoid their liability in the present case is a clear abandonment of the Commission's duty under the Workers' Compensation Act to see that claimants

receive appropriate medical and disability benefits. Further, in interpreting such provisions, we are required to interpret the Workers' Compensation Act strictly. See Ark. Code Ann. §§11-9-102 (b) and 11-9-704 (b) (3).

I agree with the majority's finding that the claimant fell at work. However, I find that a preponderance of the evidence also shows that she sustained an injury to her shoulder in that fall, and, by not allowing her to obtain medical treatment for that injury, we are letting the respondent avoid their clear obligation under the Workers' Compensation Act.

For the aforementioned reasons I must respectfully concur in part, and dissent in part, from the majority opinion.

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PHILIP A. HOOD, Commissioner