

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E606801

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| DONNA CHAMNESS, EMPLOYEE | CLAIMANT |
| WENDY'S RESTAURANT, EMPLOYER | RESPONDENT NO. 1 |
| ITT HARTFORD INS. CO., INSURANCE CARRIER | RESPONDENT NO. 1 |
| DEATH & PERMANENT TOTAL DISABILITY TRUST FUND | RESPONDENT NO. 2 |

OPINION FILED MARCH 5, 2008

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

Claimant represented by the HONORABLE JOE PERRY and the HONORABLE ROBERT DONOVAN, Attorneys at Law, Marianna, Arkansas.

Respondents No. 1 represented by the HONORABLE BRETT D. WATSON, 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 October 24, 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. On May 8, 1996, the relationship of employee-employer-carrier existed among the parties.

3. On May 8, 1996, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$261.00/\$196.00, for total/permanent partial disability.

4. On May 8, 1996, the claimant sustained an injury to her low back arising out of and in the course of her employment.

5. The claimant reached the end of her healing period as a result of the compensable May 8, 1996, low back injury on April 5, 2000.

6. The claimant has failed to sustain her burden of proof by a preponderance of the credible evidence that the May 8, 1996, compensable low back injury resulted in permanent physical impairment, pursuant to Ark. Code Ann. §11-9-704(c)(1)(B).

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.

We decline to remand the case for taking the deposition of Dr. Howser. It has been over three years since Dr. Howser wrote his report which is in the record of this case. The deposition could certainly have been obtained earlier and submitted at the hearing. We decline this belated request.

Therefore we affirm and adopt the October 24, 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 claimant has requested that this

case be remanded to the Administrative Law Judge with instructions that the deposition of Dr. John P. Howser be allowed and considered. Commission Rule 099.16 states, in part:

The Commission may, at any time after a case has been heard by an Administrative Law Judge or the Commission, order the taking of evidence by deposition or otherwise, especially when this procedure will expedite the submission of the case for decision by the Commission.

I find that the claimant has articulated a substantial basis for his request. Commission Rule 099.16 allows the Full Commission the discretion to grant his request. Therefore, I find that this case should be remanded to the Administrative Law Judge with instructions that the deposition of Dr. John P. Howser be allowed and considered.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner