

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F611981

ALICE FORD,  
EMPLOYEE

CLAIMANT

SANYO MANUFACTURING CORPORATION,  
EMPLOYER

RESPONDENT

LIBERTY MUTUAL FIRE INS COMPANY,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED JANUARY 23, 2008

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

Claimant represented by the HONORABLE KENNETH A. OLSEN,  
Attorney at Law, Little Rock, Arkansas.

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 October 1, 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 August 31, 2006, the relationship of employee-employer-carrier existed among the parties.
3. On August 31, 2006, the claimant sustained an injury to her cervical spine arising out of and in the course of her employment.

4. The respondents shall pay all reasonable and necessary medial, (sic) hospital and medical expenses, to include the diagnostic study recommended by Dr. Apurva R. Dalal, arising out of the injury of August 31, 2006.

5. The respondents have controverted the compensability of the claimant's August 31, 2006, cervical injury in its entirety.

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 October 1, 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.

DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that the claimant sustained a compensable cervical injury for which she is entitled to medical treatment. The claimant specifically described an injury to her shoulder on August 31, 2006 while reaching around a television set to make some

adjustments to its settings. When she was seen by Dr. Sudesh Banaji on September 5, 2006, she reported complaints of pain in her right shoulder, and advised that she thought her problems were related to "working on the computer." The claimant did not provide a history of a specific incident injury. Dr. Sudesh Banaji examined the claimant's right shoulder which he found to be "grossly normal." Dr. Banaji did not note the presence of any objective medical findings related to her right shoulder. The claimant returned to Dr. Banaji on September 20<sup>th</sup> and again on October 17<sup>th</sup>. At no time did Dr. Banaji detect the presence of any objective medical findings related to a right shoulder injury. During her October 17<sup>th</sup> examination, the claimant requested that Dr. Banaji x-ray her neck . Even assuming that the claimant's shoulder complaints are related to her cervical spine, the only objective findings noted by Dr. Banaji was that of arthritic changes in the claimant's cervical spine. Dr. Banaji specifically noted during he examination on October 17<sup>th</sup>, that the claimant's neck movements were "grossly normal." At no time did he detect muscle spasms on or about the claimant's cervical area. After receiving a Change of Physician order from the Commission, the claimant was

examined by Dr. Apurva Dalal, an orthopedic specialist in Memphis, Tennessee, on March 2, 2007. Dr. Dalal recorded a history of a "neck, RT shoulder, and RT hand" injury "doing repetitive work at work has caused her to have significant problem." The claimant did not provide Dr. Dalal with a history of a specific incident injury from reaching around a television set. This is the first time that the claimant alleges to have sustained an injury to her neck and not just her right shoulder. Dr. Dalal detected cervical spinal spasms, but otherwise the examination of her neck and shoulder were normal. After noting the presence of a well healed scar from a previous tennis elbow surgery, Dr. Dalal noted that the claimant's right hand "shows the evidence of a paresthesias in the ulnar fingers." It is unknown whether Dr. Dalal took new x-rays or reviewed the previous x-rays order by Dr. Banaji, but he interpreted the claimant's cervical x-rays as revealing extensive degenerative arthritis at C4, C5, and C6 with evidence of neural foraminal stenosis.

The claimant reported an injury to her right shoulder and sought medical treatment for this injury. She continued to work until she was laid off as a result of the plant closing. Even during the hearing, the

claimant continued to describe her injury as one to her right shoulder.

The medical records do not corroborate the claimant's claim of a specific incident injury. Both doctors who examined the claimant recorded a history of a repetitive injury not a specific incident. Thus, the issue becomes one of credibility. Did the claimant sustain an injury as a result of a specific incident or is her pain the result of repetitive trauma? Did the claimant injury her shoulder, or her neck? At first the claimant alleged a shoulder injury, but when the medical evidence failed to support a finding for such an injury, the claimant now contends that her problems are the result of a cervical spine injury. However, the medical records contemporaneous with her alleged injury do not support a finding of either a shoulder or cervical spine injury. Dr. Banaji noted "grossly normal" finding of both the claimant's right shoulder and neck. At no time did he note the presence of muscle spasms. It was not until March 2, 2007, more than six months after the claimant's alleged injury that any muscle spasms were detected. I cannot find that the claimant has proven by a preponderance of the evidence that these muscle spasms

are in any way causally related to the incident which caused pain in her right shoulder.

The claimant has been diagnosed with degenerative disc disease in the cervical spine. There is no evidence that this condition is causally related to the claimant's shoulder incident of August 31, 2006. Thus, any findings such as muscle spasms which may be related to the cervical disc disease is not and cannot be proven to relate to the work related incident. Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury which is established by objective medical findings for which she is entitled to benefits. Accordingly, for all the reasons set forth herein, I must respectfully dissent from the majority opinion.

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KAREN H. McKINNEY, Commissioner