

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F606649

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| DONIS LONG, EMPLOYEE | CLAIMANT |
| McKEE FOODS CORPORATION, EMPLOYER | RESPONDENT |
| RISK MANAGEMENT RESOURCES, CARRIER | RESPONDENT |

OPINION FILED JUNE 19, 2008

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

Claimant represented by HONORABLE EVELYN BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE CURTIS NEBBEN ,Attorney at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed February 13, 2007.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On June 21, 2005, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to her head on June 21, 2006.

4. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her low back on June 21, 2005.

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

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.

Thus, we affirm and adopt the 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 opinion denying the compensability of the back problems experienced by the claimant subsequent to an accident occurring on June 21, 2005.

The opinion of the Administrative Law Judge was affirmed and adopted in its entirety by the majority without additional discussion. Therefore, the opinion of the

Administrative Law Judge and all of her findings and conclusions are now the majority opinion.

There is no dispute that the claimant suffered a compensable injury on June 21, 2005, when she fell, carrying a 50-pound tub in her hands, striking a concrete floor with her buttocks and head, and rendering her unconscious. There is also no dispute that the claimant suffered a compensable head injury as a result of this incident. The causal relationship between this accident and the back problems experienced by the claimant, subsequent to the accident, are in dispute.

After her fall, the claimant was taken immediately from the job site to the Arkansas Occupational Health Clinic by the employer. She was not given a medical doctor but was assigned to a nurse for treatment. She was told by the employer that she could not go to any other doctors.

On the day of the injury, the nurse's reports indicate that the claimant was having difficulties with headaches, neck pain, lumbar pain, right hip pain, contusions of both legs, and a significant amount of

dizziness. X-rays and a CT scan of the head, as well as cervical and lumbar spine films, were obtained. The assessment of the claimant's condition, at that time, was "multiple fall injuries: Mild concussion, cervical and lumbar strain, right hip pain and contusions of both legs".

On June 27, 2005, the claimant returned to the nurse who said that the claimant was being seen "for follow-up of multiple injuries sustained in a fall on June 21, 2005 in which she suffered a mild concussion...cervical strain, lumbar strain, right hip pain and contusion of both legs". According to the nurse, the claimant said that all of these injuries had "fairly well" resolved. However, serious complaints of dizziness, vertigo, and memory problems were noted, and the claimant was referred to a neurologist, David A. Davis, for evaluation of these problems.

On July 1, 2005, the claimant began treatment with Dr. Kent Moore, a chiropractic physician, for all of the previously-mentioned "multiple injuries". With regard to the back injury only, the claimant was treated for back problems on: December 12, 2005; March 10, 2006; March 13, 2006; April

1, 2006; April 7, 2006; April 11, 2006; April 12, 2006;
April 15, 2006; April 20, 2006; April 27, 2006; April 28,
2006; and May 18, 2006.

On May 22, 2006, the claimant began treatment with Dr. Wm. Frank Webb, with complaints of back pain and right leg numbness, for which she was prescribed medication. On June 15, 2006, the claimant was treated again with medication by Dr. Webb for back pain.

On August 15, 2006, the claimant was seen in the emergency room at Northwest Medical Center for complaints of back pain, among other things, and was treated with steroids. She was sent for an MRI of the lumbar spine by the admitting physician, Dr. Mary Leah Oman. The MRI showed a bulging disk at the L5-S1 level.

On September 19, 2006, the claimant was seen by Dr. R. David Cannon for complaints of low back pain. He fitted her with a TENS unit and recommended epidural injections and medication therapy. On October 20, 2006 and November 9, 2006, Dr. Cannon performed lumbar epidural steroid injections at the L5-S1 interspace. After the second

injection into the L5-S1 interspace, it was noted that the claimant experienced 100% relief from her pain.

The Administrative Law Judge refused to find the claimant's back injury compensable and stated the following as her only rationale:

Although the claimant had initial complaints of low back pain subsequent to her June 21, 2005 fall, while working for the respondent, it was some ten (10) to eleven (11) months later that she began to actually have ongoing complaints of low back pain. The MRI results reveal only minimal degenerative disc disease and no impingement is noted. I find that there is insufficient medical evidence to substantiate a compensable injury to the claimant's low back and would seriously question any low back problems resulting from her June 21, 2005 fall since in (sic) was nearly a year later that she began to continually began to (sic) have complaints of pain in her low back. Therefore, this claim for benefits for this claimant's low back problems should be denied in its entirety.

The Administrative Law Judge's only basis for denying the compensability of the low back injury was that it was nearly a year later that she began to continually

have complaints of pain in her low back. This is a misstatement of fact. During the eleven (11) month period following her injury, the claimant saw Dr. Moore twelve (12) times with complaints of low back pain. It is interesting to note that the Administrative Law Judge's opinion covers in detail every medical report in the record, except those of Dr. Moore. His reports are not even mentioned. It is obvious that the Administrative Law Judge did not even read the reports of Dr. Moore. Otherwise, she could not have reached the conclusion that the claimant was not experiencing difficulties with her low back during the ten (10) to eleven (11) months following her injury. The reports of Dr. Moore are hand-written and, admittedly, more difficult to read than typed reports. However, this is no excuse for totally ignoring the most critical medical evidence on the issue at hand.

In conclusion, it is the duty of this Commission to conduct a de novo review of the record and make findings of fact consistent with the evidence. The Administrative Law Judge's finding that the claimant did not suffer a

compensable back injury because she did not complain of back problems for ten (10) to eleven (11) months after the accident is totally contradicted by the fact that the claimant saw a doctor on twelve occasions during that period of time. An opinion based on such a significant factual error should not have been affirmed and adopted by this Commission.

For the reasons stated above, I must respectfully dissent from the majority opinion.

PHILIP A. HOOD, Commissioner