

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F604107

TERESA ROBERTS, EMPLOYEE CLAIMANT
KIDS KORNER DAYCARE, AN UNINSURED EMPLOYER RESPONDENT

OPINION FILED JULY 15, 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 THE HONORABLE RICK WOODS, 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 June 27, 2007.

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

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on June 21, 2006, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage of \$152.20 which would entitle her to

compensation at the rate of \$101.00 per week for total disability is also hereby accepted as fact.

3. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her low back while employed by the respondent.

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'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 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 back on March 2, 2006, and therefore, I must respectfully dissent.

A finding of compensability calls for proof of a specific incident, identifiable by time and place of occurrence, arising out of and in the course of employment, causing physical harm to the body, requiring medical treatment or resulting in disability, which is established by medical evidence and supported by objective findings. Ark. Code Ann. §11-9-102(A)(i) and §11-9-102(4)(D).

_____The majority denies the claimant benefits based on the Administrative Law Judge's determination that the claimant could not show objective medical findings of any injuries incurred on March 2, 2006. This is simply incorrect. "Objective findings" are those findings which cannot come under the voluntary control of the patient. See Ark. Code Ann. §11-9-102(16)(A)(i). The Arkansas Supreme Court has held that treatment designed to relieve symptoms associated with an objective finding is sufficient to meet the objective medical findings criteria in the Workers' Compensation Act. See Fred's, Inc. v. Jefferson, 361 Ark.

258, 206 S.W.3d 238 (2005) and Estridge v. Waste Management, 34 Ark. 276, 33 S.W.3d 167 (2000). "[A] reasonable inference from the chronology of events was that the medication and physical therapy were prescribed to aid [the claimant] and to treat her injury; any other construction of these events did not withstand scrutiny or pass the test of reasonableness." Fred's, Inc. v. Jefferson, 361 Ark. at 259. Here, the medical records clearly show that the claimant was prescribed anti-inflammatory drugs and physical therapy within a week of the injury at work. Therefore, I find that the claimant has presented "objective findings" of a compensable lower back injury, and the majority has clearly erred.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner