

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F513785

CHERYL ROQUE, EMPLOYEE	CLAIMANT
SILOAM SPRINGS MEMORIAL HOSPITAL, EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, CARRIER	RESPONDENT

OPINION FILED JANUARY 16, 2008

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

Claimant represented by HONORABLE RONALD McCANN, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE GUY A. WADE, Attorney at Law, Little Rock, 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 stipulations agreed to by the parties at the pre-hearing conference conducted on October 25, 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 sufficient to entitle her to compensation at the maximum compensation rates of \$466.00 for total disability benefits and \$350.00 for permanent partial disability benefits 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 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 finding that the claimant did not establish that she sustained a compensable injury while in the course and scope of her employment. Based upon a de novo review of the record, I find that the claimant provided sufficient evidence to satisfy the requirements of the Workers' Compensation Act for proving a compensable injury.

_____ At the time of her injury, the claimant was a respiratory therapist employed at the Siloam Springs Memorial Hospital. Her job involved, among other things, providing respiratory assistance to the hospital's patients and procuring blood samples for the purposes of blood gas analysis. The claimant testified that on November 24, 2005, a coworker asked her to obtain a blood sample from a patient in the hospital emergency room. The claimant testified that after obtaining a blood gas kit, she went to the patient who was lying on a gurney. She stated that as she was attempting to sit down on a wheeled stool, it rolled away, causing her to fall. However, she caught herself by putting one hand on the stool and the other on the gurney and avoided falling on the floor. According to the claimant, her back began hurting immediately following this incident but she drew the blood sample and took it to the laboratory for further analysis. She stated that while walking, her back pain continued and worsened substantially. Eventually, she called another person to fill in for her for the balance of her shift. After making these arrangements, she called Jeff Copeland, her immediate supervisor, who was on vacation in Little Rock

to okay this arrangement. She also advised Doreen Roberts who was the supervisory person on duty the day the claimant's injury occurred. The claimant testified that she advised Ms. Roberts that she was injured.

Both Mr. Copeland and Ms. Roberts testified at the hearing. According to Mr. Copeland's testimony, the claimant called him and said that she had injured her back. However, he understood that she had hurt her back getting up from a booth in the break room. Ms. Roberts stated that she could not recall the claimant giving any reason as to why she left early. She further testified that she was aware that the claimant had found a substitute to finish out her shift for her but did not know the reason for doing so. According to Ms. Roberts, since the day of the claimant's injury was Thanksgiving, it was not uncommon for staff members to find others to fill in for them on their shifts so that they could leave early.

The other individual the claimant testified that she told about her injury was Julie Shearin. Ms. Shearin worked in the respondent employer's Personnel Department and generally handled workers' compensation reports made by

injured workers. The claimant said that she tried to contact Ms. Shearin immediately following the injury but Ms. Shearin was not available and that she had left a message for her. However, the claimant stated that Ms. Shearin did not call her back. Eventually, Ms. Shearin met with the claimant and the claimant filled out a Notice of Injury (Form AR-N), and the employer completed a Form 1. These documents are dated December 23, 2005. According to Ms. Shearin, this is the first time the respondent employer was made aware that the claimant was stating that she had suffered a job related injury. Ms. Shearin also testified that the claimant told her that she had injured herself getting out of a booth in the employee break room. In response, Ms. Shearin, she said that she told the claimant that the injury would not be compensable under those circumstances.

The only real issue in dispute in this claim is whether the claimant was injured as she described during her testimony. The Majority, by affirming and adopting the Administrative Law Judge's opinion, held that the claimant's testimony was not sufficient to meet her burden of proof. The Majority erroneously determined that the claimant's

testimony is contradicted by that of her corroborating witness, Bob Pratt. The Majority cites discrepancies in the testimony of Mr. Pratt and the claimant. For example, they note that Mr. Pratt testified that he had asked the claimant to assist him in taking the blood gas measurement and that he had followed her into the emergency room. He stated that the claimant should have known that he was there. However, the claimant testified that she did not know that he had witnessed her fall. Mr. Pratt also testified that when the incident with the stool occurred, she did in fact nearly fall backwards and caught herself with one hand on the stool. However, he stated that she was holding the blood gas measuring device in her right hand at the time this happened. Whereas the claimant stated that she had laid the instrument on the gurney prior to her slip, and when she fell, she grabbed onto the edge of the gurney as well as the stool. Mr. Pratt also testified that, at the time, this incident did not seem to be a "big deal" and the claimant completed drawing the blood to perform the blood gas analysis.

In my opinion, the claimant's testimony is

credible and, when taken in conjunction with all of Mr. Pratt's testimony and the statement she made to her treating physicians, is more than sufficient to establish by a preponderance of the evidence, that she sustained a job related injury on November 24, 2005. I believe that the discrepancies pointed out between the claimant's testimony and that of Mr. Pratt are relatively minor and in no way undercut the believability of the claimant.

For example, the claimant stated that she did not have the blood gas instrument in her hand when she fell. While it is true that Mr. Pratt said that it was, I do not see how this makes any real difference. The point of the testimony provided by both witnesses was that the claimant attempted to sit on the stool and it rolled out from under her. The claimant stated that she grabbed herself on the stool and the edge of the gurney. Mr. Pratt stated that she caught herself by placing herself by placing her left hand only on the stool. However, the point is that the claimant did in fact slip and nearly fell and caught herself. The claimant, who is a heavy woman states that in this fall she sustained and an injury to her back. Whether she grabbed

onto the gurney or not is, in my opinion, irrelevant.

I further note that Mr. Pratt's testimony corroborated the claimant's complaint that she began experiencing significant pain immediately following the injury. He testified that she was obviously in pain and that her stance and gait were visibly altered following the injury. He also stated that she told him at the time that she injured herself in the fall and that she was having difficulty functioning.

Much is also made of the claimant's statements that she didn't know Mr. Pratt had seen her fall. The respondent contrasts this statement with Mr. Pratt's testimony that he had followed her into the emergency room and that she should have known that he was there. However, the claimant never stated that she didn't know that he was present. She merely testified that she did not know that he had seen her fall. Interestingly enough, on the Form N the claimant filled out when she finally met with Ms. Shearin, she indicated under the section of the form which asks for any witnesses that the accident had been seen by the emergency room staff. On that basis, I do not believe that

there are any discrepancies between the claimant's testimony and Mr. Pratt on this point.

I also note that the statements that the claimant made to her treating physicians are all in accord to what she testified to having told her coworkers. A progress note from the claimant's personal physician, Dr. R. H. Weaver, a general practitioner in Gentry, Arkansas, is dated November 25, 2005, the date following her injury. In that note, Dr. Weaver sets out the following:

"She fell yesterday at work injuring her back separating or irritating her right sacroiliac. She is in excruciating pain. She has been to see Dr. Tucker. She sort of missed the chair, went down and injured her right sacroiliac with radiation down her backside. She is an insulin dependent diabetic and has been doing okay with that. She has severe muscle spasms."

I believe that the statement that the claimant gave to her treating physician is especially significant given that Mr. Copeland and Ms. Shearin testified that the claimant told them about an incident of getting up from a booth in the break room. As noted by the respondent, the claimant indeed had a long history of seeking medical treatment for

cervical and thoracic back pain, and some history of being treated for low back pain. It seems unlikely to me that the claimant would have made up a story of a job related accident since she had already been getting treatment for various other spinal injuries. Further, the respondent suggests that the claimant developed her story about the injury involving the stool only after Ms. Shearin told her that such an injury would not be compensable since it would have occurred during a break. However, the description the claimant gave to her doctor occurred almost a month before she spoke with Ms. Shearin. Obviously, at the time she gave her doctor a history of her job related accident, she would have had no reason to alter her version of events based on anything she had been told by Ms. Shearin.

The Majority also cites the claimant's history of low back pain as a basis for denying her present claim. However, the extensive medical records regarding the claimant's past history of chiropractic treatment demonstrates that most of the treatment she received related to her neck and upper back pain. While she did receive some low back treatment from her chiropractor, her complaints to

him were in the nature of transitory back pain which was treated with chiropractic manipulation. However, when she saw her chiropractor on November 25, 2005, the day following the injury, he immediately recognized that this was a more serious injury than one that he had treated her for in the past, and directed that she seek treatment from a medical doctor. After the claimant saw Dr. Weaver, he directed that she undergo a neurosurgical evaluation which eventually resulted in her having back surgery. I do not see how it can even be questioned that the injury the claimant received while at work was of a more serious nature than what she had received treatment for from Dr. Tucker, her chiropractor. That her subsequent injury was much more serious and requiring more extensive medical treatment is evidenced by Dr. Tucker's refusal to treat her further and the back surgery performed by Dr. Kelly Danks, a Fayetteville neurosurgeon.

Therefore, I find that the claimant met her burden of establishing a compensable work-related injury. In support of that decision, I note that the claimant's testimony was credible and supported by statements that she

gave to her treating physicians and the testimony of Mr. Pratt. I also believe that any discrepancies between her testimony and Mr. Pratt's are minor and do not effect the underlying truthfulness of her version of events. The claimant is therefore entitled to all reasonable and necessary medical expenses, including the surgery performed by Dr. Danks as well as all other treatment related to her lower back injury. Likewise, I find that the claimant is entitled to temporary total disability benefits which accrued prior to the date of the hearing, as well as any permanent partial disability benefits which she may be entitled to based upon the extent of her permanent impairment.

_____For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner