

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F701098

KIMBERLY A. TATERA, EMPLOYEE	CLAIMANT
UAMS, EMPLOYER	RESPONDENT
PUBLIC EMPLOYEE CLAIMS, CARRIER	RESPONDENT

OPINION FILED JULY 15, 2008

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

Claimant represented by HONORABLE STEVEN R. McNEELY,
Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE RICHARD S. SMITH,
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 June 12, 2007.

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

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-claimant existed among the parties on December 8, 2006.

2. The claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable injury, caused by a specific incident, arising out of and in the course of her employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102 as she was not performing employment services at the time of injury.

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 to her right shoulder on or about December 8, 2006. After a de novo review of the

record, I find that the claimant did suffer a compensable injury to her right shoulder on or about December 8, 2006 and, therefore, I must respectfully dissent.

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. §11-9-102(4) (A) (i) (Repl. 2002), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (4) (D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Here, the only controverted element is whether the injury arose out of and was in the course of employment.

The case was submitted on the record in lieu of a hearing. The claimant worked for the University of Arkansas for Medical Sciences as a supervisor in the business office. Through her deposition, the claimant testified that she was occasionally called by the office on her mobile phone while she was on her lunch break.

I find that the claimant has shown, by a preponderance of the evidence, that she was performing employment services when she sustained a specific incident arm and shoulder injury. While the Administrative Law Judge correctly recites the facts, the law is best stated by the latest decision concerning the issue. In Texarkana School District v. Conner, ___ Ark. ___ (May 8, 2008), the Arkansas Supreme Court held that an injured custodian should be compensated for his work-related injury. In Conner, the Court stated that the question of whether the claimant was going to work was less important than the fact that the claimant considered himself to be on call even during his lunch break. Here, the claimant has testified that her office had called her on her mobile phone to answer business

requests in the past, a fact which the respondent has not controverted.

In conclusion, I find that the claimant was engaged in employment services at the time of the accident on December 8, 2006 and is entitled to reasonable and necessary medical treatment and disability benefits associated with her compensable injury.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner