

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F608366

STARLA TRIPP,
EMPLOYEE

CLAIMANT

JOHNSON REGIONAL MEDICAL CENTER,
EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER

RESPONDENT

OPINION FILED APRIL 1, 2008

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

Claimant represented by the HONORABLE GARY DAVIS,
Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE GUY ALTON WADE,
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 November 30, 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 July 25, 2006, the relationship of employee-
self insured employer-third party administrator
existed between the parties.

3. On July 25, 2006, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$256.00 for total disability and \$192 for permanent partial disability.

4. On July 25, 2006, the claimant sustained compensable injuries to her neck or cervical spine and upper back. Specifically, the claimant has established by the medical evidence, which is supported by "objective findings", the actual existence of physical injuries to these portions of her body. Further, she has proven by the greater weight of the credible evidence that such injuries arose out of and occurred in the course of here employment, were caused by a specific incident, are identifiable by time and place of occurrence, resulted in internal physical harm to these portions of her body, required medical services, and resulted in temporary disability.

5. The claimant has failed to prove that she sustained a "compensable injury" to her shoulder. Specifically, she has failed to establish by medical evidence, which is supported by objective findings, the actual existence of any physical injury to what would be commonly considered the "shoulder". Thus, she has failed to satisfy the statutory requirement of Ark. Code Ann. §11-9-102(4)(D) in regard to an injury to this portion of her body.

6. The claimant has failed to prove that she sustained a "compensable injury" to her lower back. Specifically, she has failed to prove that the existence of any actual physical injury to her lower back is supported by "objective findings", as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i). Therefore, she has failed to satisfy the requirement of Ark. Code Ann. §11-9-101(4)(D) in regard to an injury to this portion of her body.

7. The claimant is entitled to reasonably necessary medical services for her compensable injuries. Such reasonably necessary medical services should include the services provided her by personnel at the emergency room of Johnson

County Regional Medical Center on July 25, 2006. Such services would also include any further reasonably necessary medical services the claimant might require by a physician of the respondents' selection. The respondents would be liable for the expense of these services, subject to the medical fee schedule established by this Commission.

8. The medical services provided to the claimant for her compensable injuries by and at the direction of the physicians at the Millard-Henry Clinic constitute "unauthorized" medical services within the meaning of Ark. Code Ann. §11-9-514(b). Therefore, under the provisions of this subdivision, the respondents are not liable for the expense of these services.

9. The claimant has proven by the greater weight of the credible evidence that she is entitled to temporary total disability benefits from July 26, 2006 through at least September 11, 2006. Specifically, the claimant has proven that during this interval, she continued within her healing period from the effects of her compensable injuries and was also rendered totally disabled from performing regular gainful employment by these injuries.

10. The respondents have now controverted the claim in its entirety.

11. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on all benefits herein and herein after awarded directly to the claimant.

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 November 30, 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.

OLAN W. REEVES, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that the claimant is entitled to temporary total disability benefits and future medical treatment. Based upon my de novo review of the entire record, I find that the claimant has failed to meet her burden of proof. In reaching this finding, I must point out that the only evidence indicating that the claimant was totally incapacitated from earning wages is her own self-serving testimony and counterfeit off-work slips.

Admittedly the claimant was seen in the emergency room immediately after her automobile accident and was advised to remain off work until she was "cleared" by her primary care physician. The claimant was examined by Dr. Barton, her primary care physician, the day after the accident and he specifically noted: "I asked her to return to see Dr. Turner next week for a re evaluation since I will be out of town, and if he

doesn't think she should be released for work at that time I'll see her the following week." When the claimant was examined by Dr. Turner that next week he did not set her up for an appointment the following week as indicated by Dr. Barton. Moreover, there is no credible evidence that Dr. Turner issued the claimant an off work slip at that time. In fact, when Dr. Turner was sent a copy of the off work slip presented by the claimant to her employer, he specifically wrote on the slip, "The above note did not originate @ Millard-Henry Clinic. That is not my signature." Although Dr. Turner continued to prescribe physical therapy for the claimant, there is no indication in any of his office notes that he ever considered taking or keeping the claimant off of work.

In my opinion the claimant simply is not a credible witness. It is patently obvious that the claimant has attempted to defraud the workers' compensation system by submitting fraudulent off work slips to her employer. If she was truly disabled from working, there is no reason why her treating physician would not or could not provide her with an off work slip. The very fact that the claimant had to falsify off work slips, is evidence in and of itself that she was refused such slips by her treating physician.

Accordingly, I cannot in good conscience find that this claimant has proven by a preponderance of the credible evidence that was within her healing period and totally incapacitated from earning wages.

I further find that this claimant has failed to prove by a preponderance of the evidence that she is entitled to any additional medical treatment in the future. The claimant did not present any credible evidence that any additional medical treatment is reasonable and necessary in connection with her minor muscle cervical strain. More than a year and a half has transpired since the claimant's compensable injury. The claimant has not received any medical treatment since September of 2006. She did not present any evidence that she is, in fact, in need of any further medical treatment or that any physician has recommended any reasonable and necessary medical treatment for her minor muscle strain. Therefore, I find that it is error for the majority to award "possible future medical treatment." Such an award requires speculation and conjecture of the need for such treatment.

Accordingly, for those reasons set forth herein, I must respectfully dissent from the majority opinion.

KAREN H. McKINNEY, Commissioner