

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F608300

ERNEST C. WAY, EMPLOYEE	CLAIMANT
LOWE'S HOME CENTERS, INC., EMPLOYER	RESPONDENT
SPECIALTY RISK SERVICES, CARRIER/TPA	RESPONDENT

OPINION FILED NOVEMBER 7, 2008

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

Claimant represented by HONORABLE FREDERICK S. "RICK" SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondent represented by HONORABLE RANDY P. MURPHY, 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 December 31, 2007.

The Administrative Law Judge entered the following findings:

1. The Arkansas Workers' Compensation Commission has jurisdiction over these claims.
2. The stipulations set forth above are reasonable and are hereby accepted.

3. Claimant has not proven by a preponderance of the evidence that he sustained a compensable injury to his right shoulder.
4. The reasonable and necessary medical care issue is moot in light of the above finding.

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 finding that the claimant failed to prove the compensability of a right shoulder injury. From a de novo review of the record, I find that the claimant proved, by a preponderance of the evidence, the compensability of his right shoulder injury and that reasonably necessary medical treatment should have been awarded for the treatment of that injury.

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 the findings and conclusions contained in that decision are now the majority opinion. Death & Permanent Total Disability Trust Fund v. Branum, 82 Ark. App. 338, 107 S.W.3d 876 (2003).

The Administrative Law Judge denied this claim based on a finding that the claimant was not a credible witness. The first attack on the claimant's credibility is based on the fact that the claimant gave two different dates that the injury occurred. The claimant has indicated that the injury occurred on April 13, 2006 and has also said that it occurred on April 22, 2006. While it is obvious that the claimant was not sure of the actual date of injury, he credibly testified that he was moving a 60-inch vanity when he experienced problems with his right shoulder. The history of injury given to his initial treating physician on April 26, 2006 indicated that his shoulder problems were related to heavy lifting at Lowe's. Immediately after his injury, the claimant requested a ten-pound lifting restriction because of shoulder problems, which was honored by the respondent. In short, regardless of the actual date

of injury, it was obvious that the claimant had shoulder problems as a result of lifting on the job and that the employer was aware of this fact.

Further, the Administrative Law Judge questioned the claimant's credibility because the initial medical records of April 26, 2006 indicate that the claimant's shoulder problems had been in existence for three months at that time. The claimant explained that he had reported problems for three or four days and that his statements had been misinterpreted. The claimant had long been a patient at the Veteran's Administration and was treated there immediately before and after the April 2006 injury. If the claimant had been having shoulder problems for three months before the injury in question, then one would have expected to see some indication of this fact in the medical records. No such evidence exists.

The Administrative Law Judge also notes that the claimant reported "pulling" a vanity when the injury occurred and then, on other occasions, said that he was "lifting" a vanity at the time of his injury. The claimant

consistently described the his injury as occurring when he was maneuvering a 60-inch vanity from a cherry picker to a high shelf. Obviously, this activity required some degree of both pulling and lifting. Under these circumstances, it is difficult to imagine how the differences in these two descriptions of injury could have negatively affected a determination of the claimant's credibility.

Finally, it is important to note that he claimant is an honorably discharged Marine and Vietnam War veteran who suffers from Post Traumatic Stress Disorder and exposure to Agent Orange which has resulted in a 60% service-connected disability. He was suffering from strokes in the month preceding his injury. Under these circumstances, it is not surprising that he had some difficulty with reporting procedures and historical accuracy. The Administrative Law Judge did not take these facts into account when assessing the claimant's credibility. If he had done so, the claimant would have been found to have been a credible witness.

Way - F608300

-7-

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

PHILIP A. HOOD, Commissioner