

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F407232

DONNA GREENFIELD, EMPLOYEE	CLAIMANT
CONAGRA FOODS, INC., EMPLOYER	RESPONDENT NO. 1
SEDGWICK CLAIMS MANAGEMENT SVCS. TPA	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 3

OPINION FILED AUGUST 17, 2009

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

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

Respondent No. 1 represented by HONORABLE BILL H. WALMSLEY, Attorney at Law, Batesville, Arkansas.

Respondent No. 2 represented by HONORABLE DAVID PAKE, Attorney at Law, Little Rock, Arkansas.

Respondent No. 3 represented by HONORABLE CHRISTY KING, 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 22, 2008.

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

1. The Opinion of the Arkansas Workers' Compensation Commission filed

September 8, 2006, as affirmed by the Arkansas Court of Appeals on May 30, 2007, in Case # CA06-1339, is final and constitutes the law of the case.

2. The claimant reserves all other benefits to which she may be entitled to under the Act.

3. The claimant reached the end of her healing period for her compensable cervical strain injury on July 19, 2004.

4. The claimant failed to prove her entitlement to any permanent physical impairment as a result of her compensable cervical strain injury.

5. The claimant failed to prove by a preponderance of the evidence that she was rendered permanently and totally disabled as a result of her compensable cervical strain injury.

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.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood concurs.

CONCURRING OPINION

I must regrettably concur in the majority's opinion. It is abundantly clear to me that the claimant's compensable injury is not a musculoskeletal "cervical strain" injury and is, in fact, an aggravation of a pre-existing disc condition. However, no matter how erroneous the majority's characterization of the claimant's injury as a "cervical strain" may be, this issue has already been decided by the Full Commission and affirmed by the Court of Appeals and is res judicata. Therefore, the claimant cannot receive the 6% impairment rating she would otherwise be entitled to for her operated on cervical disc injury. Accordingly, the claimant cannot prove by a preponderance of the evidence that she is entitled to wage-loss disability benefits. Based on the evidence of record, I must also concur in the majority's finding that the claimant did not prove by a preponderance of the evidence her entitlement to permanent and total disability benefits, despite the fact

that a rating is not required for those benefits to be awarded.

_____ Although I wholeheartedly believe that justice has not been served in this case, due to the aforementioned reasons, I must regrettably concur in the majority opinion.

PHILIP A. HOOD, Commissioner