

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F801320

EDNA HIGHTOWER,  
EMPLOYEE

CLAIMANT

KIMBERLY CLARK,  
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED DECEMBER 4, 2009

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

Claimant represented by the HONORABLE C. MICHAEL WHITE,  
Attorney at Law, North Little Rock, Arkansas.

Respondents represented by the HONORABLE CAROL LOCKARD  
WORLEY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and  
Adopted.

## OPINION AND ORDER

Claimant appeals an opinion and order of the  
Administrative Law Judge filed June 2, 2009. 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 the within claim.
2. The employee-employer-carrier relationship existed at all relevant times, including February 7, 2008.
3. 3. The claimant's average weekly wage at the time of her alleged injury was \$1,461.00; her temporary total disability rate is \$522.00, and her permanent partial disability rate is \$392.00.

4. The respondent has controverted any benefits not previously paid.
5. The claimant proved by a preponderance of the evidence that she sustained "a soft tissue injury" to her left shoulder, in the form of a contusion, as a result of the work incident of February 7, 2008.
6. The claimant has failed to prove by a preponderance of that she is entitled to additional medical treatment for her left shoulder injury.
7. The claimant failed to prove by a preponderance of the evidence her entitlement to any temporary total disability for her compensable shoulder injury.
8. The claimant failed to prove by a preponderance of the credible evidence that she suffered a cervical injury as a result of February 7, 2008, work-incident.
9. The claimant failed to prove by a preponderance of the evidence that she suffered a mental injury as a result of the February 7, 2008, work-related incident.

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.

The claimant alleges that she sustained compensable injuries that are governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injuries are, indeed, injuries that are covered by the Act; however, the claimant has failed to establish the elements necessary to prove these compensable injuries by a preponderance of the evidence.

Therefore we affirm and adopt the June 2, 2009 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.

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A. WATSON BELL, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

**DISSENTING OPINION**

I must respectfully dissent from the majority opinion. The majority has affirmed and adopted the Administrative Law Judge's opinion. In this opinion, the Administrative Law Judge states that the claimant is not a credible witness. I disagree. After a de novo review

of the record, I find that the claimant credibly testified as to the incident and the injuries she sustained in the incident. The claimant's shoulder injury is well-documented and not disputed by the respondent. Although there was some discrepancy in the claimant's deposition testimony regarding a pre-existing neck condition, I find the discrepancy to be minor, and do not believe it discredits the claimant's otherwise credible testimony regarding the onset of a neck injury after the incident at work. I also believe, based on the claimant's testimony, that the incident at work caused the claimant to experience great anxiety, necessitating the counseling visits she received.

In short, I find the claimant to be a credible witness who sustained compensable shoulder, neck and mental injuries at work on February 7, 2008 and I would award benefits accordingly.

For the aforementioned reasons I must respectfully dissent.

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PHILIP A. HOOD, Commissioner

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