

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F612037

PATRICIA HINTON, EMPLOYEE

CLAIMANT

KIMBERLY-CLARK CORPORATION,
SELF-INSURED EMPLOYER

RESPONDENT NO. 1

SECOND INJURY FUND

RESPONDENT NO. 2

OPINION FILED FEBRUARY 17, 2009

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

Claimant *pro se*.

Respondent represented by HONORABLE JARROD PARRISH, 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 17, 2008.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant's Proffered Exhibit 2 should be admitted into evidence.

4. Claimant has not proven by a preponderance of the evidence that she sustained a compensable injury on October 28, 2006.

5. The balance of the issues are moot in light of the above finding.

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 dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. The majority has affirmed and adopted the Administrative Law Judge's decision. Therefore, the majority has based its opinion on the sole issue addressed by the Administrative Law Judge: whether the claimant presented "objective findings" of her hand injury. Ark. Code Ann. §11-9-102(4) (D) states: "A compensable injury must be established by medical evidence supported by objective findings as defined in subdivision (16) of this section." Ark. Code Ann. §11-9-102(16) states: "Objective findings are those findings which cannot come under the voluntary control of the patient." After a de novo review of the record, I find that the claimant has present medical evidence supported by objective findings as required by Ark. Code Ann. §11-9-102(4) (D) and Ark. Code Ann. §11-9-102(16), and therefore I must respectfully dissent from the majority opinion.

Bobby Atkins, the respondent's plant nurse, testified at the hearing that the claimant "came to my clinic every day for me to change those dressings and check

that suture line to make sure she wasn't getting an infection." When asked to describe the wound, Mr. Atkins testified as follows:

Q. Okay. What is your - do you have any medical training, Mr. Atkins?

A. Yes, I'm a registered nurse.

Q. You're just a registered nurse, okay. So was the cut on the Palmer's crease?

A. Yes.

Q. What was the - what was the length of it?

A. In inches I would say probably an inch and three quarters.

Q. Okay.

A. Ten external stitches.

...

Q. Okay. Can you describe the wound? Was it a jagged cut? Was it a -

A. No sir. It was just-

Q. -straight cut?

A. It was a straight cut.

Based on the above-outlined testimony of the plant nurse alone, the claimant has provided "medical evidence" supported by "objective findings." The testimony of a registered nurse, at the hearing, outlining his observations

of the claimant's injury, satisfies both Ark. Code Ann. §11-9-102(4) (D) and Ark. Code Ann. §11-9-102(16). The testimony of a registered nurse is "medical evidence." There is no requirement in Ark. Code Ann. §11-9-102(4) (D) that the "medical evidence" must be contained in a medical report. Furthermore, as the claimant does not control the nurse's testimony, the nurse's observation of the claimant's injury constitutes "objective findings." Ark. Code Ann. §11-9-102(16) also does not require "objective findings" to be contained in a medical report. The majority has clearly impermissibly added additional requirements to Ark. Code Ann. §11-9-102(4) (D) and Ark. Code Ann. §11-9-102(16) in violation of the doctrine of strict construction.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner