

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F806041

FRANCES JOHNSON,
EMPLOYEE

CLAIMANT

SILOAM SPRINGS SCHOOL DISTRICT,
EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,
TPA

RESPONDENT

OPINION FILED AUGUST 25, 2009

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

Claimant represented by the HONORABLE JASON HATFIELD,
Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE CONSTANCE
CLARK, Attorney at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted as modified.

OPINION AND ORDER

Respondents appeal an opinion and order of the
Administrative Law Judge filed May 4, 2009. In said
order, the Administrative Law Judge made the following
findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on December 31, 2008, and contained in a pre-hearing order filed January 6, 2009, are hereby accepted as fact.
2. There is a causal connection between the claimant's admittedly compensable injury of October 17, 2007, to her left foot and the injury she sustained on March 19, 2008, to her right shoulder.

3. The claimant was acting reasonably when she descended stairs at her parent's home while wearing her medically prescribed boot.

4. There was no intervening independent cause that occurred on March 19, 2008, in regard to the claimant's right shoulder injury.

5. The claimant suffered a compensable injury on March 19, 2008, when she injured her right shoulder.

6. The medical treatment provided to the claimant for her right shoulder difficulties was both reasonable and necessary.

7. The claimant is entitled to temporary total disability benefits as a result of her compensable right shoulder injury from May 6, 2008, until May 27, 2008.

8. The claimant is entitled to a permanent impairment rating of 24 percent to the upper right extremity which translates to a 14 percent impairment to the body as a whole regarding her right shoulder.

9. The claimant's average weekly wage shall be calculated by dividing \$21,522.00 by 40 weeks. Which translates to an average weekly wage of \$538.05. The claimant is entitled to a temporary total disability rate of \$358.70 per week and a permanent partial disability rate of \$269 per week.

10. The claimant's attorney is entitled to an attorney's fee in this matter as set out in the Arkansas Workers' Compensation Act.

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, except for

finding No. 8 with regard to the claimant's permanent anatomical impairment rating. Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment. Ark. Code Ann. §11-9-102(4)(F)(ii)(a). The Commission has adopted the Guides to the Evaluation of Permanent Impairment (4th ed. 1993) to be used in assessing anatomical impairment. *Workers' Compensation Laws And Rules, Rule 099.34*; Ark. Code Ann. §11-9-522(g). Any determination of the existence or extent of physical impairment shall be *supported by* objective and measurable physical or mental findings. Ark. Code Ann. §11-9-704(c)(1)(B) [emphasis supplied]. See *Singleton v. City of Pine Bluff*, 97 Ark. App. 59, 244 S.W.3d 709 (2006).

In the present matter, the administrative law judge found that the claimant was entitled to a 14% impairment to the body as a whole. The Full Commission finds that the claimant proved she sustained anatomical impairment in the amount of 8% to the body as a whole. Dr. Sites, the treating surgeon, opined that the claimant had sustained an 8% whole-person impairment as a result of her right shoulder injury and surgery. Dr. Sites relied on Table 27, p. 3/61 of the Guides. Dr. Sites noted

that the claimant had undergone a distal clavicle resection and rotator cuff repair. The administrative law judge improperly concluded that the claimant underwent an arthroplasty. Dr. Sites did not perform an arthroplasty. Dr. Sites assessed the claimant with a 14% impairment to her upper extremity. Dr. Sites' rating was based on supporting objective medical findings. Table 3, p. 3/20 of the Guides, provides for an 8% whole-person impairment based on a 14% upper extremity impairment.

The Full Commission therefore finds that the 8% impairment rating assessed by Dr. Sites was proper and supported by the medical evidence in this case. The compensable injury to the claimant's right shoulder was the major cause of the 8% whole-person impairment rating. The claimant proved she was entitled to anatomical impairment in the amount of 8%.

The Full Commission therefore finds from a preponderance of the evidence that the findings made by the Administrative Law Judge are correct, except for finding No. 8, and are therefore otherwise adopted by the Full Commission. We therefore affirm the May 4, 2009 decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein,

except for finding of fact No. 8, and we 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). The claimant's injury is entitled to fees for legal services pursuant to Ark. Code Ann. §11-9-715(Repl. 2002). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

PHILIP A. HOOD, Commissioner