

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F410671 & F410670

WILMA L. KING, EMPLOYEE	CLAIMANT
ST. MARY'S REGIONAL MEDICAL CENTER, EMPLOYER	RESPONDENT NO. 1
SPECIALTY RISK SERVICES, INSURANCE CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED FEBRUARY 23, 2009

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

Claimant represented by the HONORABLE LAURA MCKINNON, Attorney at Law, Fayetteville, Arkansas.

Respondent No. 1 represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

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

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed May 30, 2008. 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 relationship existed at all relevant times.
3. The claimant's weekly temporary total disability compensation rate is \$440.00 and her weekly permanent partial disability rate is \$330.00.
4. The claimant proved that she sustained compensable injuries to her back, neck, and left shoulder during and in the course of her employment with respondents no. 1.
5. Respondents no. 1 stipulated to pay for medical treatment that the claimant received from Dr. Russell Allison per directive from the employer-respondent.
6. The claimant proved that the medical treatment of record for her compensable injuries beginning in April 2003, and continuing through March 15, 2005 was reasonably necessary in connection with her compensable injuries pursuant to Ark. Code § 11-9-508(a).
7. The claimant failed to prove by a preponderance of the evidence her entitlement to any temporary total disability compensation.
8. Pursuant to Ark. Code Ann. §11-9-411, respondents no. 1 are entitled to a credit in an amount equal to, dollar-for-dollar, the amount of benefits paid under the claimant's group health care and short-term plans for the claimant's compensable injuries.
9. No statutory authority exists under the Act for awarding a controverted attorney's fee on the medical benefits awarded herein.

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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the May 30, 2008, decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and 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).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715

(Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that the claimant proved by a preponderance of the evidence that she sustained compensable injuries on March 10, 2003 and April 11, 2003. Based upon my de novo review of the record, I find that the claimant failed to meet her burden of proof. Accordingly, I would reverse the decision of the Administrative Law Judge.

The claimant was employed by the respondent employer as a recovery room nurse. The claimant

testified that on March 10, 2003, she was pushing a patient to the recovery room alone when she experienced a strain or pain in her left back. The claimant stated that she told the operating room crew later on that she had hurt herself and that she was unable to help the crew move another patient. The claimant completed an incident report the next day and slipped it under the door of the nursing surgery supervisor, Jack Small. Mr. Small contacted the claimant the next day and asked if she needed medical attention. The claimant declined because she was resting and doing okay.

The claimant was on vacation for a week and then returned to work. On April 11, 2003, she was tending a patient in the recovery room who was restless when she felt a sharp pain in the back of her left shoulder and down the back of her arm. The claimant told Brenda Randalls, a co-worker, and Ms. Randalls insisted the claimant seek treatment in the emergency room because it possibly could be a heart related problem. The claimant was observed over night and discharged. Her medical reports indicate that the claimant complained of left arm pain, some nausea and some "lightheadedness." There was no mention of an alleged work related injury. The claimant did not complete an incident report to give

to her supervisor Mr. Small. Instead, the claimant called B.J. Meyers, the employee health nurse. The claimant told Ms. Meyers that she would seek medical care on her own.

The claimant sought treatment from Dr. Russell Allison on April 23, 2003. His notes reflected an injury date of March 10, 2003, and that the claimant described a back injury on that date with the pain moving up high into the neck and into the left arm. Ms. Meyers accompanied the claimant to this visit. There was absolutely no mention of an alleged work-related injury in April. The claimant did not file a Form C on that alleged injury until October of 2004. Dr. Allison assessed the claimant with a cervical and thoracic strain. The claimant underwent an MRI which yielded only some degenerative changes. X-rays showed minimal thoracic spondylosis.

The claimant treated with Dr. Bruce Brown. She indicated to Dr. Brown that her back pain was resolved as of June 5, 2003. The claimant was ultimately diagnosed with carpal tunnel syndrome but does not claim it was work related. The claimant did not communicate with Ms. Meyers with respect to her treatment after the

first visit with Dr. Allison. The claimant was filing treatment under her personal health insurance.

In my opinion, a review of the evidence demonstrates that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury. The claimant does not have any objective findings of an injury. Her MRI was normal except for degenerative findings. This was confirmed by Dr. McCoy, who performed an EMG on the claimant in February of 2004. Dr. McCoy assessed that the claimant had "probable cervical and thoracic myofascial pain secondary to muscular imbalance (thoracolumbar scoliosis)." Dr. McCoy confirmed that the claimant's cervical and lumbar MRI's showed no disc herniations, neural foraminal stenosis or canal stenosis. Significantly, Dr. McCoy documented that the claimant's complaints were "spontaneous, no history of accident." In short, I simply cannot find that the claimant proved by a preponderance of the evidence that she sustained a compensable injury on March 10, 2003 or April 11, 2003. Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner