

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F405418 & F412590

WYNONA SMITH, EMPLOYEE	CLAIMANT
HAIR PLUS BEAUTY SUPPLIERS, INC., EMPLOYER	RESPONDENT NO. 1
TRAVELERS INDEMNITY COMPANY, INSURANCE CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED JULY 7, 2009

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

Claimant appears Pro Se.

Respondent No. 1 represented by the HONORABLE PHILLIP CUFFMAN, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE DAVID SIMMONS, 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 January 13, 2009. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. Th employer/employee/carrier relationship existed at all pertinent times, including March 9, 2004, and December 3, 2004.
2. The claimant's average weekly wage was \$294.00.

3. That claim No. F412590 was dismissed on April 27, 2005.

4. That the claimant has failed to prove by a preponderance of the evidence that her need for medical treatment is causally related to the claimant's injury to her back on March 9, 2004 or her hip on December 3, 2004.

5. Claimant's (sic) has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits.

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 January 13, 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 concurs, in part, and dissents, in part.

**CONCURRING AND DISSENTING OPINION**

The majority is affirming and adopting an Administrative Law Judge's decision handed down on January 13, 2009. I concur with the majority's decision in regard to the Administrative Law Judge's finding the claimant sustained compensable injuries on March 9, 2004 and December 3, 2004. I further concur with the majority's affirmance of the Administrative Law Judge's decision to rule the statute of limitation was not a bar to either claim. However, I believe the claimant established she was entitled to additional medical treatment and disability benefits. For that reason, I

must respectfully dissent from the balance of the majority's opinion.

The claimant sustained two compensable injuries. The first of these, on March 9, 2004, occurred during the course of an armed robbery at the claimant's employer. During the robbery, she was forced to the floor by one of robbers who then forcibly pulled her up by her shirt in order to empty the cash register. Shortly thereafter, the robber knocked her to the floor with his gun.

The second injury occurred on December 3, 2004. On that date, the claimant was attempting to assist a customer obtain some merchandise. While squatting down in an awkward position, she reached across some shelves and felt a sudden sharp pain in her hip. She described the sensation as sounding like a bone cracking.

The respondent appears to have initially accepted both of the above claims as compensable. It is not clear from the record at what point they stopped providing the claimant benefits. However, the claimant seems to have obtained the bulk of her medical treatment following the occurrence of her two compensable injuries using her own resources. It is difficult to analyze the

medical record because most of it is irrelevant or extraneous documentation. But, the record makes clear the claimant has consistently complained of spinal and hip problems since her injuries. It is also clear she has received little treatment for those conditions other than medication and limited physical therapy.

In denying this claim, the Administrative Law Judge relied primarily on the opinion of Dr. Patrick Kortebein, a neurologist practicing at UAMS. In his report of September 21, 2007, Dr. Kortebein opined the claimant's complaints of pain were not related to her 2004 compensable injuries. However, the doctor also stated his belief the claimant was suffering from a post traumatic stress disorder and depression and she needed to seek psychological treatment and counseling for that condition.

In my opinion, Dr. Kortebein's opinion regarding the causation of the claimant's problems must be considered in the light of her consistent complaints and symptoms and the evaluations of her other physicians. The treatment the claimant received following her injury was nearly identical with the complaints she made to Dr. Kortebein in 2007 and other physicians she saw after him. That is, she suffered

from back and spinal pain, neck pain, occasionally pain and tingling in her hands, and, after December 2004, pain in her hip and lower back. Prior to seeing Dr. Kortebein, all of the doctors the claimant saw considered these complaints to be related to her 2004 injuries. The medical record does not reflect any basis for concluding, as did Dr. Kortebein, how the claimant's symptoms suddenly went from being the result of her injuries to being unrelated to them. While the doctor is free to rely on speculation and conjecture if he wishes, we are not. I, therefore, find the claimant's symptoms display an ongoing need for medical treatment related to her compensable injuries. I further find Dr. Kortebein's opinion to the contrary is entitled to little weight.

The key problem in the claimant's medical treatment is her inability to afford appropriate, consistent medical treatment for her condition. As stated above, it is not clear at what point the respondent stopped providing her medical treatment but it was apparently only a short time after her compensable injuries. Since the claimant could not, with her own resources, afford diagnostic testing such as MRI's, CT scans, Nerve Conduction Studies, and

similar diagnostic methods, her condition has, by and large, gone untreated. She has been given occasional prescriptions of muscle relaxers and analgesics, but she has not ever received consistent, long term treatment for her problems.

In reviewing the claimant's medical records and her testimony, it is apparent she is not requesting extravagant medical treatment or benefits. She is merely asking the respondent to carry out their obligation under the Workers' Compensation Act and provide her with reasonable and necessary medical treatment. This may include further evaluations of her condition; it may include physical therapy; it may include medication or other treatment. But, the record clearly establishes she is in need of such treatment.

Also, as even Dr. Kortebein opined, the claimant is need of psychological treatment and counseling for psychological stress induced by being the victim of a violent crime. All of her physicians have mentioned the claimant as suffering from depression, and have, at times, recommended various antidepressant medications. However, the claimant has not been able to provide this treatment on her own and has not been able to afford the recommended prescriptions. While I am

aware of the requirements for establishing a compensable psychological injury, I believe the respondents are, at a minimum, required to provide the claimant an appropriate psychological evaluation for this type of injury. This has simply never done. While it would have been better had such an evaluation been performed on the claimant in 2004, it is not the claimant's fault the respondents did not provide, or even offer, such treatment to her.

Also, I believe the claimant has established she is totally disabled and is still in her healing period. On that basis, I believe the claimant has established her entitlement to temporary total disability benefits.

In short, my disagreement with the majority's decision turns upon their inconsistent logic in finding the claimant sustained compensable injuries but then cavalierly denying her treatment for those conditions. I realize a considerable amount of time has passed since the injuries were sustained. However, the respondent has an obligation to provide the claimant an appropriate degree of medical treatment. They have failed in that obligation. While it is not too late to rectify that failure, the majority is refusing to do so. For that

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reason, I must respectfully dissent from that part of their opinion.

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PHILIP A. HOOD, Commissioner