

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. F907171

JERRY BEAVER, EMPLOYEE	CLAIMANT
GRAPHIC PACKAGING, EMPLOYER	RESPONDENT
LIBERTY MUTUAL GROUP, CARRIER/TPA	RESPONDENT

OPINION FILED OCTOBER 21, 2010

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

Claimant represented by the HONORABLE EDDIE H. WALKER, JR., Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE JAMES ARNOLD, II, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed May 18, 2010.

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

1. The stipulations agreed to by the parties at the prehearing conference conducted on November 18, 2009, and contained in a pre-hearing order filed November 19, 1009, are hereby accepted as fact.
2. The claimant has proven by a preponderance of the evidence the presence of objective medical findings of right shoulder difficulties.

3. The claimant failed to prove by a preponderance of the evidence that he suffered a compensable injury on July 22, 2008.

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.

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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. After a de novo review of the record, I find that the

Administrative Law Judge has erred and should be reversed. The claimant reported a shoulder injury on July 22, 2008, and the medical record supports his claim. The only contradictory evidence is the claimant's statement that his shoulder hurt after he swatted a fly, camping in September 2008. This is simply not an incident significant enough to break the chain of causation. It is ludicrous for the majority to find that swatting a fly caused a large rotator cuff tear, especially in light of the fact that the claimant reported a job-related shoulder injury incurred by pulling on boxes on July 22, 2008.

The claimant saw Dr. Clark, the company selected physician, on September 22, 2008. Dr. Clark's report describes the accident: "pulling on boxes heard pop in right shoulder". Further, Dr. Clark's record indicates that the symptoms started on July 22, 2008. Dr. Clark's report indicates date of accident July 22, 2008, and answers the question of whether this is workers' compensation: YES.

A note signed by Mark Rhinehart confirms that the claimant reported a job-related accident on July 22, 2008 at about 12:30 p.m. The note indicates that the claimant specifically mentioned that his shoulder popped while he was performing a pulling motion.

Neither Mr. Rhinehart nor Mr. Christello testified at the hearing to refute anything that the claimant said.

Therefore, the compelling weight of the evidence shows that the claimant did, in fact, report a job-related incident on July 22, 2008, immediately after it happened, and that, at the time, he reported a pop in his shoulder.

Dr. Clark's report relates the claimant's symptoms to the July 22, 2008 incident. Additionally, Dr. Jones, an orthopedic surgeon, opined on January 19, 2009, that he remained convinced that the claimant's shoulder problem was something that occurred at work. He specifically referred to the claimant's injuring his shoulder at work during a lifting episode where the shoulder popped.

Despite the fact that the claimant is an extremely credible witness whose claim is supported by the medical record, the majority, by affirming and adopting the Administrative Law Judge, has chosen to believe that it is more likely that a normal activity of daily living such as swatting a fly is more likely to have caused a large rotator cuff tear in the claimant's right shoulder than the job-related incident that occurred on July 22, 2008.

The July 22, 2008 incident was immediately reported, and it is documented by a note from the supervisory person, Mr. Rhinehart, to whom the incident was reported. That written note documents that the claimant reported that the incident caused a pop in his shoulder.

The claimant testified that he continued to work until the day before the surgery. The surgery was not until December 10, 2008. Therefore, the claimant not only continued to work between when the accident happened up until he swatted at the fly, he also continued to work after he swatted the fly and after a September 29, 2008 MRI diagnosed him as having a large rotator cuff tear.

Thus, no reasonable inferences can be drawn regarding the severity of the claimant's injury based upon the fact that he worked without complaining to his co-workers, because he continued to work without complaining to his co-workers even after he knew that he had a large rotator cuff tear.

The claimant testified that he heard and felt a pop in his shoulder on July 22, 2008. There is no indication that a pop occurred in connection with the claimant swatting at the fly. The claimant testified that the pain in his shoulder never completely went away after the July 22, 2008 job-related incident, and that he did not consider swatting at the fly any big deal; he just mentioned it as an example of an activity that would make his shoulder more painful.

Dr. Clark's records attribute the shoulder problem to a July 22, 2008 injury, and Dr. Jones' records attribute the claimant's shoulder problem to the July 22, 2008 job-related accident. It requires gross speculation to conclude that the

mere activity of attempting to swat a fly is more likely to have caused a large rotator cuff tear than the documented job-related accident that occurred on July 22, 2008. As such, I find that the claimant sustained a compensable shoulder injury on July 22, 2008, and, contrary to the majority, I would reverse the decision of the Administrative Law Judge.

For the aforementioned reasons I must respectfully dissent.

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PHILIP A. HOOD, Commissioner