

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F702807

BETTY J. COPELAND, EMPLOYEE	CLAIMANT
HILLCREST HOME, EMPLOYER	RESPONDENT
CANNON COCHRAN MANAGEMENT SERVICES, INSURANCE CARRIER	RESPONDENT

OPINION FILED MAY 21, 2010

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

Claimant represented by the HONORABLE FREDERICK S. "RICK" SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by the HONORABLE MICHAEL RYBURN, 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 January 7, 2010. 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-carrier relationship existed at all relevant times, (sic) March 15, 2007.
3. The claimant sustained a compensable right hip injury on said date.

4. The claimant's Motion to Recuse is hereby denied. I find the Act to be constitutional.
5. The claimant proved by a preponderance of the evidence that additional medical treatment is reasonably necessary for her compensable hip injury, under the care of Dr. Chakales.
6. The claimant failed to establish a compensable consequence or specific incident injury to her back by medical evidence supported by objective findings.
7. The claimant proved by a preponderance of the evidence evidence (sic) that she sustained a compensable injury to her right upper extremity, for which she is entitled to medical treatment under the care of Dr. Chakales.
8. All issues not litigated herein are reserved under the 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. 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 January 7, 2010, 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's findings that the claimant proved by a preponderance of the evidence that she was entitled to additional medical treatment. Based upon my de novo review of the record, I find that the claimant has failed to meet her burden of proof.

The claimant worked for the respondent employer as a licensed practical nurse. On March 15, 2007, she tripped over an electrical cord and fell on a bed tray table. The claimant broke her hip and underwent partial hip replacement surgery. The respondents accepted the injury as compensable and paid medical benefits as well as a 15% permanent anatomical impairment rating.

Approximately three months after her hip injury, the claimant began complaining of problems with her right elbow. She told the doctor that she thought she might have hit her elbow when she fell, but she was not sure. Dr. McBride, the claimant's treating physician, examined the claimant's elbow and had the claimant undergo an EMG/NCV study. The study showed mild

to medium sensory neuropathy and also, ulnar neuropathy at the elbow.

The claimant ultimately came under the care of Dr. Harold Chakales due to a change of physician. Dr. Chakales has diagnosed the claimant with carpal tunnel syndrome although the claimant has not had any tests that revealed that she has carpal tunnel syndrome. Dr. Chakales is also treating the claimant for the continuing problems she is having with her hip.

The claimant must prove that she sustained a carpal tunnel syndrome injury arising out of and in the course of employment, that a work-related injury is the major cause of her disability or need for medical treatment, and the compensable injury must be established by objective medical findings.

There is absolutely no proof in the record that the claimant has carpal tunnel syndrome. Dr. Chakales has diagnosed the claimant with carpal tunnel, but there are absolutely no objective findings supporting such a diagnosis. The claimant had an EMG/NCV test done approximately three months after she fell and broke her hip. However, there is no causal connection between the claimant's problems with her right upper extremity and her compensable injury. The first mention

of an elbow problem was on May 18, 2007, two months after the claimant injured her hip. She stated to Dr. McBride, at the time, that she thought she landed on her elbow, but she was not sure. The medical records for the claimant's hip injury, which she was treated for two months prior to her complaint to Dr. McBride, contain absolutely no mention whatsoever of a problem with her elbow. In fact, the medical records from the emergency room at the time of the claimant's injury indicate that the claimant had no other injuries. Simply put, I cannot find that the claimant proved by a preponderance of the evidence that she sustained a compensable injury to her elbow and/or right wrist when she fell on March 15, 2007. Accordingly, I dissent from the majority's award of benefits.

KAREN H. MCKINNEY, COMMISSIONER