

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F807227

LIDIA GOMEZ, EMPLOYEE	CLAIMANT
BENTONVILLE PUBLIC SCHOOLS, EMPLOYER	RESPONDENT
RISK MANAGEMENT, CARRIER	RESPONDENT

OPINION FILED JULY 19, 2010

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

Claimant represented by the HONORABLE HADLEY HINDMARSH,
Attorney at Law, Rogers, Arkansas.

Respondent represented by the HONORABLE CURTIS NEBBEN,
Attorney at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed December 3, 2009.

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

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on April 15, 2009, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.
2. The parties' stipulation that claimant's average weekly wage would be calculated based upon an hourly rate of \$7.75 for forty hours per week is also hereby accepted as fact.

3. The claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her thoracic spine on February 2, 2007. Respondent is liable for payment of all reasonable and necessary medical treatment related to claimant's thoracic spine injury.
4. The claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits for her thoracic spine injury.
5. The claimant has failed to prove by a preponderance of the evidence that she suffered any other compensable injuries on February 2, 2007. This includes other portions of her spine, her left shoulder, knees, or a cerebral spinal fluid leak.

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.

A. WATSON BELL, Chairman

KAREN H. McKINNEY, Commissioner

Commissioner Hood concurs and dissents.

CONCURRING & DISSENTING OPINION

I must respectfully concur, in part, and dissent, in part, from the majority opinion. The majority, affirming and adopting the Administrative Law Judge, finds that the claimant suffered a compensable injury as to a thoracic strain while employed by the respondent on February 2, 2007. I specifically concur on this issue. However, the majority, again affirming and adopting the Administrative Law Judge, also finds that the claimant failed to prove by a preponderance of the evidence that claimant's cerebro spinal fluid (CSF) leak injury was a compensable injury. It is from this finding that I must respectfully dissent.

It is uncontroverted that the claimant, a janitor at Bentonville High School, sustained a compensable injury on February 2, 2007, when she fell while cleaning ink stains off a wall in a classroom. Claimant's injuries initially presented as back and shoulder pain, were accepted by the respondent, and claimant was referred for evaluation and treatment by a workers' compensation physician at the Arkansas Occupational Health Clinic. The claimant testified at the hearing that she noticed the CSF leak from her left nostril three days after the accident, that she had hit her head when she fell, and that she reported the nasal drainage concerns to the physician that she was referred to by the respondent. Claimant further testified that the workers' compensation physician told her to see her family doctor, "did not listen", and told claimant the nasal drainage was just an allergy.

The claimant followed up with her primary family doctor, Dr. Robert Hull, who then treated her for allergies due to the sinus drainage from March 23, 2007 until September 4, 2007, when the claimant was finally referred to an ear, nose, and throat doctor. At the direction of the ENT doctor, Dr. Randall Black, a sample of the fluid

draining from claimant's nose was taken and found to be CSF fluid. The claimant was referred to a specialist at UAMS, Dr. Brendan Stack, who evaluated the CSF leak and determined that surgical correction was necessary. Claimant underwent surgical correction first on January 29, 2008, and then again, one year later, on January 13, 2009, because the CSF leak had not been fully repaired.

Contrary to the majority, I find that the timing of the onset of the CSF leak cannot be ignored. There is no question that the claimant fell at work. The symptoms of the CSF leak started merely three days after the fall at work. The claimant credibly testified that she hit her head during the fall at work. Arkansas Courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. Hall v. Pittman Construction Co., 234 Ark. 104, 357 S.W.2d 263 (1962). Here, the claimant's credible testimony cannot be disregarded and the timing of the injury, almost

immediately after a fall at work, cannot be ignored. I find, based on a preponderance of the evidence of record that the claimant sustained a compensable CSF leak injury on February 2, 2007.

For the aforementioned reasons I must respectfully concur, in part, and dissent, in part, from the majority opinion.

PHILIP A. HOOD, Commissioner