

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F811602

FRANCES MORGAN,  
EMPLOYEE

CLAIMANT

METHODIST FAMILY HEALTH,  
EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,  
TPA

RESPONDENT

OPINION FILED APRIL 15, 2010

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

Claimant represented by the HONORABLE STEVEN R. MCNEELY,  
Attorney at Law, Little Rock, Arkansas.

Respondent represented by the HONORABLE GUY ALTON WADE,  
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 July 15, 2009. In said  
order, the Administrative Law Judge made the following  
findings of fact and conclusions of law:

1. The employer/employee relationship existed on or  
about October 27, 2008.
2. The Workers' Compensation Commission has  
jurisdiction of this claim.

3. The respondents have controverted this claim.
4. If this claim is found compensable, the claimant is entitled to the maximum compensation rates in effect for 2008 of \$522.00 per week for temporary total disability and \$392.00 per week for permanent partial disability.
5. The claimant has failed to establish by a preponderance of the credible evidence that she sustained a compensable shoulder injury.

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 July 15, 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

**DISSENTING OPINION**

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the claimant has proved by a preponderance of the evidence that she sustained a compensable specific incident shoulder injury.

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. §11-9-102(4) (A) (i) (Repl. 2002), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury

caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (4) (D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Here, the primary question to be determined is whether the claimant presented proof by a preponderance of the evidence that her shoulder injury was caused by a specific incident arising out of and in the course of employment. The phrase "arising out of the employment" refers to the origin or cause of the accident, so the employee is required to show that a causal connection exists between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). 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). The court has stated that if "months" have passed between an accident and the manifestation of an injury, reasonable men might disagree about the existence of a causal connection, See Kivett v. Redmond Co., 234 Ark. 855, 355 S.W. 2d 172 (1962); Wentz v. Servicemaster, 75 Ark. App. 296, 57 S.W. 3d 753 (2001). On November 6, 2008 the claimant was diagnosed with a rotator cuff tear for which she underwent surgery. The claimant credibly testified that on October 27, 2008, while at work as a teacher for special needs children, she reached behind her with both arms to grab a violent child. While doing so, she felt a pop in her left shoulder. The claimant testified that she felt like she had just pulled a muscle so she did not seek medical treatment until ten days later, as her symptoms had not resolved. In the initial medical report the claimant reported the work-related nature of her injury. In fact, with the exception of the November 6, 2008 report which characterizes the incident as a "lifting" incident versus a "grabbing" incident, all of her

medical records reference the child-grabbing incident. Contrary to the majority, I find the claimant to be a credible witness. I believe she reported her injury to her co-worker and reported her injury to her supervisor as she testified. I do not find that a delay in official reporting is sufficient cause to find that the October 27, 2008 specific incident did not occur. Based on the claimant's credible testimony and the medical record, I find that the claimant sustained a compensable left shoulder rotator cuff tear on October 27, 2008 when she reached behind her to grab a violent child. The claimant is entitled to all workers' compensation benefits associated with this injury including the reasonably necessary shoulder surgery and temporary total disability benefits while she was in her healing period.

For the aforementioned reasons I must respectfully dissent.

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PHILIP A. HOOD, Commissioner