

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. G000203

ANA AGUIRRE, EMPLOYEE	CLAIMANT
SIMMONS FOODS, INC., EMPLOYER	RESPONDENT
S.B. HOWARD, CARRIER/TPA	RESPONDENT

OPINION FILED MARCH 7, 2011

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

Claimant represented by the HONORABLE EVELYN BROOKS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE TOD BASSETT, 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 August 30, 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 pre-hearing conference conducted on March 17, 2010, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable

injury to her right shoulder, elbow, or hip on September 10, 2009.

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 the claimant sustained compensable injuries to her right shoulder, elbow, and

hip on September 10, 2009, when she fell down the stairs at work.

The claimant testified that as she descended the stairs, she slipped, and slid down the stairs on her bottom and right side. The claimant testified she was in a hurry to get to her workstation for work and, when she got there, she told her supervisor, Sergio, about her injuries. The claimant also testified she reported the injury to the night nurse at the nurses' station on her first break. When the claimant went to the nurses' station on her break to report the injury, there was no record made by the night nurse of her visit.

Although there was no mention in the records of any injuries that day, the claimant was written up for not turning in a supposed knee injury in a timely manner. David Sutton, Resource Manager, testified that the claimant was written up for not turning in a knee injury which she allegedly had for a couple of days. He testified that he was notified of this injury by the claimant's supervisor, Mr. Sergio Lopez. The claimant testified that she had never had a knee injury, ever. She was also never seen for any knee injury by any physician, and there are no medical reports of any knee injury. No knee injury was recorded by Mr. Sutton. A statement by Mr. Sutton was written, but was written some eight months after the date of injury, and does not state what part of the body the injury involved. It would seem, since the claimant's supervisor, Mr. Lopez, told Mr. Sutton that

the injury was to the knee, that he inadvertently misinformed Mr. Sutton about the injury. There was clearly miscommunication between Mr. Lopez and the claimant about the nature of the injury. It was difficult for Mr. Sutton to remember what part of the body the injury involved after that many months, so it was recorded incorrectly.

The claimant steadfastly maintained at the hearing that she was under the impression that she was being written up for not turning in the injuries to her right side earlier that day. More importantly, there was never any claim made or paperwork done on the alleged injury to the knee, or the true injury to her right side. The day nurse, Cheryl Smith, testified that there was nothing in the nursing records or personnel file about the knee injury or the correct injury to the right side. She also testified that she was not the nurse who was there at the time the claimant came to the nurses' station to report the right shoulder, elbow, and hip injury. Again, there was no mention of even a knee injury, until David Sutton's May 2010 statement, and this statement was written some eight months after the date of injury. It is logical to conclude that, if there were no mention of the alleged knee injury in the nursing notes, there would be no mention of the claimant's right side injuries. Not surprisingly, there is no mention in the nurses' notes or personnel file notes of the claimant's right side injuries,

although the claimant's supervisor, the day nurse, and the resource manager all knew about the injury. Apparently, none of them offered to or completed any paperwork on the injury. The claimant does not speak English, and when she went to see Mr. Sutton, she only knew they were filling out some kind of papers, but not what they said.

At the time of this injury, the claimant was being seen by Dr. Park for an injury to her left shoulder, which had occurred previous to the right side injuries. On September 29, 2009, she saw Dr. Park for the previous injury to her left shoulder. The claimant testified that she had gone back to the nursing station numerous times after her injury to get pain medication, and to ask for treatment for her right shoulder injury. The day nurse, Cheryl Smith, told her that this was not an injury that Simmons was responsible for, and that she would have to get a separate appointment to see Dr. Park for her right shoulder. This explains why the claimant did not insist to be treated for her right shoulder at her left shoulder appointment on September 29<sup>th</sup>. She was simply following the rules, and believed what she had been told about the need for a separate appointment for the right shoulder. This also explains why there is no mention of the right shoulder in the report.

When the claimant continued to have pain, and was not allowed to receive any treatment for her right shoulder, she made

an appointment to see Dr. Park on her own. This was documented in Dr. Park's December 30, 2009 report. The report states that the claimant did have an objective finding of swelling. The impression of the x-ray taken that day was "acute tennis elbow, probably from the sudden grip during the fall." She was treated with an injection for her shoulder, and he recommended she wear a tennis elbow sleeve. Because of her ongoing problems, she was seen again by Dr. Park on March 30, 2010. He observed that she was still having pain in her shoulder and elbow, and recommended that since she was not responding to conservative management, she see Dr. Jeff Johnson for her elbow. He also administered another injection to the shoulder, and recommended she return to see him in six weeks. The claimant scheduled appointments to see Dr. Johnson, but did not have the money to pay for his visits, and was forced to cancel them. She also did not have the money to go back to Dr. Park on her own, and was not allowed to do so by the respondent.

When reviewing the evidence, it is plain there were compensable injuries sustained on September 10, 2009 to the claimant's right shoulder, elbow, and hip. The medical reports show objective findings of the injuries, and the need for treatment. It is also apparent the claimant did report her injuries, but the paperwork was never filled out by her supervisor, resource manager, or the night nurse.

For the aforementioned reasons I must respectfully dissent.

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PHILIP A. HOOD, Commissioner