

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G008997

MERCEDES CRUZ, EMPLOYEE	CLAIMANT
SIMMONS FOODS, INC., EMPLOYER	RESPONDENT
S.B. HOWARD & COMPANY, CARRIER/TPA	RESPONDENT

OPINION FILED NOVEMBER 28, 2011

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

Claimant represented by the HONORABLE CONRAD ODOM, Attorney at Law, Fayetteville, 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 July 29, 2011.

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 March 23, 2011, and contained in a pre-hearing order filed March 29, 2011, are hereby accepted as fact.
2. The claimant has failed to prove by a preponderance of the evidence that she sustained

compensable injuries to her knees bilaterally, back, right shoulder, and right arm on November 7, 2008.

3. The claimant has failed to prove that she is entitled to any benefits in this matter.

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, in part, and dissents, in part.

CONCURRING AND DISSENTING OPINION

I must respectfully concur, in part, and dissent, in

part, from the majority opinion. After a de novo review of the record, I would award the claimant benefits for all the injuries she sustained in the November 7, 2008 fall, with the exception of the bilateral knees.

The claimant's job responsibilities included trimming tendons, hanging whole chickens, making boxes, handling dry ice, and holding a position on the line in the plant. On November 7, 2008, while returning from the restroom, the claimant crossed over a drain and slipped on a piece of fat. As she slipped, the claimant tensed up. She ended up falling on her knees and hitting a metal staircase. She immediately experienced pain to her knees, right shoulder, right elbow, and back.

After the accident, the claimant presented herself to the plant nurse on numerous occasions, requesting that the respondent send her to a doctor because the pain was becoming more intense. After the plant nurse refused to comply with the claimant's requests, she informed the claimant of different exercises to perform as treatment for her injuries and gave her some restrictions for work.

On her own, the claimant saw nurse practitioner, Jayne Pruden, of Northwest Physicians, LLC, for her back pain in connection with her fall at work on November 14, 2008, where it was noted that she had a backache. On a re-evaluation of the claimant on December 9, 2008, it was noted that she continued to

have general backaches, as well as right lateral epicondylitis. Nurse Pruden then sent the claimant to Dr. Sandefur at Northwest Medical Center of Washington County in Springdale, Arkansas, for an x-ray of her back on December 16, 2008. Dr. Sandefur noted that there was little degenerative change, but a more significant finding is not appreciated on the limited assessment.

Then, on February 2, 2009, Nurse Pruden gave the claimant an injection in her elbow because the pain had not subdued. The next day, she was seen at the same clinic because, although the pain lessened in her elbow, it had radiated to her right lateral neck and was severe with any movement. She was diagnosed that day with right lateral epicondylitis and chronic right shoulder pain.

Later, on September 24, 2009, she returned to Northwest Physicians, LLC, in regard to her right shoulder and lower back pain from her fall in the previous November. On December 7, 2009, the claimant again returned for her relentless back pain, where it was noted that she was having muscle aches.

On April 5, 2010, she saw the respondent's health nurse for the pain in her right hand, arm, and shoulder. It was noted that she could not perform overhead work, lifting, pushing, pulling, or carrying over 10 pounds, and that she was to follow-up with the nurse prior to the start of her shifts for Ergo therapy. Nurse Smith also noted that the claimant had

experienced this discomfort several times while working at the company and that the claimant believed it to be a work-related injury.

Subsequently, the claimant returned to her normal family doctor on April 23, 2010, where it was noted that she still had back pain and muscle aches. On June 17, 2010, Nurse Practitioner Cindy Noble noted that the claimant was still in pain with regard to her right elbow, shoulder, and back, that was getting worse. Nurse Noble also noted that the claimant stated that the injury was work-related, but she would need a plant nurse to treat the injury. The claimant then presented herself to Washington Regional Medical Center for an evaluation of her back, as she was in pain that was exacerbated by movement. Then, on November 21, 2010, the claimant received an x-ray of her spine, where it was noted that she had mild narrowing of the L5-S1 disc space.

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).

The Administrative Law Judge denied this claim based on a lack of objective findings. With the exception of the bilateral knees, I disagree. The Arkansas Supreme Court has held that treatment designed to relieve symptoms associated with an objective finding is sufficient to meet the objective medical findings criteria in the Workers' Compensation Act. See Fred's, Inc. v. Jefferson, 361 Ark. 258, 206 S. W. 3d 238 (2005) and Estridge v. Waste Management, 34 Ark. 276, 33 S. W. 3rd 167 (2000).

Here, in addition to the objective findings for the back and right shoulder that the Administrative Law Judge characterizes as degenerative, since the date of injury, the claimant has received multiple treatments for the injuries she sustained in the work-related fall. On 12/16/08, the claimant's back injury was treated with Naprosyn. On 2/2/09, the claimant's elbow injury was treated with an injection of Depomedrol/Marcaine. On 2/3/09, the claimant was given Lortab

for her back and right shoulder injury. In fact, a considerable majority of the medical evidence shows that the claimant was receiving treatment for pain and difficulty with her back, elbow and shoulder immediately following, and directly related to her fall at work. As such, I find that the claimant has presented objective findings of her injury.

As for a causal connection between the claimant's back, elbow, and shoulder injuries to the fall at work, I find that the claimant's credible testimony and the medical record support a finding that the claimant's injuries arose out of and in the course and scope of her 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). The claimant credibly testified about the fall at work. She immediately sought treatment from the respondent-employer and was denied. One week after the fall at work, she sought treatment on her own. 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, there is no gap in treatment that would give rise to an argument that the claimant's injuries were caused by anything other than the fall at work. In fact, the claimant consistently reported to her doctors that her injuries were work-related.

In conclusion, I find, based on the claimant's credible testimony and the medical record, that she sustained compensable back, right shoulder, and right elbow injuries in the fall at work on November 7, 2008. I would award benefits accordingly.

For the aforementioned reasons, I must concur, in part, and dissent, in part.

PHILIP A. HOOD, Commissioner