

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F711467

BRENDA C. HICKS, EMPLOYEE	CLAIMANT
MARKED TREE SCHOOL DISTRICT, SELF-INSURED EMPLOYER	RESPONDENT NO. 1
ARKANSAS SCHOOL BOARD ASSOCIATION WORKERS' COMP TRUST INSURANCE CARRIER/TPA	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED MARCH 22, 2011

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

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

Respondent No. 1 represented by the HONORABLE BETTY J.
HARDY, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE DAVID B.
SIMMONS, 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 October 13, 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 this claim.

2. The existence of the employment relationship on October 30, 2007, during which time the claimant earned wages sufficient to entitle her to workers' compensation benefits at the weekly rate of \$504.00/\$378.00, for temporary total/permanent partial disability.
3. On October 30, 2007, the claimant sustained injuries to her left hip and low back arising out of and in the course of her employment.
4. The claimant reached the end of her healing period relative to the October 30, 2007, left hip injury on September 8, 2008, with a residual anatomical impairment of 15% to the body as a whole.
5. Medical treatment rendered to the claimant in connection with her compensable low back injury growing out of the October 30, 2007, injury subsequent to June 4, 2008, was reasonably necessary in connection with the treatment of her compensable back injury.
6. The claimant was not provided a copy of the notice, Form AR-N, in accordance with Ark. Code Ann. §11-9-514(c)(1) and (2), and, as such, the change of physician rules do not apply.
7. The respondent shall pay all reasonable hospital and medical expenses arising out of the October 30, 2007, left hip and low back injury of the claimant.
8. The respondent has controverted the compensability of the claimant's low back injury subsequent to June 4, 2008, and 15% whole body impairment relative to the claimant's left hip compensable 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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the October 13, 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 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. Specifically, I concur in the finding that the claimant sustained a compensable injury to her lower back. However, I must respectfully dissent from the finding that the claimant is entitled to a 15% permanent anatomical impairment rating for her hip injury. I find that the claimant has failed to meet her burden of proof.

A review of the evidence demonstrates that the claimant is not entitled to any permanent anatomical impairment. The claimant's treating physician, Dr. Guinn, assessed the claimant with a 15% permanent anatomical impairment rating based up Table 36 in the 4th edition of the Guides. Using Table 36 and the mild category, Section c., he assigned this rating. The Table as illustrated below states:

Severity	Patient's signs	Whole-person Impairment (%)
Mild	a. Antalgic limp with shortened stance phase and documented moderate to advanced arthritic changes or hip, knee, or ankle	7
	b. Positive Trendelenberg sign and moderate to advanced osteoarthritis of hip	10
	c. Same as category a or b above, but patient requires part-time use of cane or crutch for distance walking but not usually at home or work place.	15

Dr. Guinn was questioned at his deposition regarding the impairment rating:

17. Okay. So basically, her fifteen percent (15%) impairment rating came from the fact that she uses a cane part of the time?
- A. Right. And she also had an antalgic limp, but the cane is the higher number on there. So she had evidence of an A but the C was her higher number, and you don't - like I said, you don't add them together. So that's why I gave them a fifteen instead of a twenty two (22).
- Q. Okay. And under the A section, it is also indicated moderate to advanced arthritis. Does she have any type of arthritic condition?
- A. Not on, not on our follow up studies.....

It is obvious from the reading of Table 36 that arthritis must be present in order for there to be any permanent anatomical impairment. Dr. Guinn, the claimant's treating physician, has opined that the claimant does not

have any arthritis present. Therefore, the claimant is not entitled to any permanent anatomical impairment for her fractured hip. Accordingly, I cannot agree with the majority's award.

Therefore, for those reasons set forth herein, I respectfully concur in part and dissent in part from the majority opinion.

KAREN H. MCKINNEY, Commissioner