

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F507963

SOPHIA KANU-POLK, EMPLOYEE	CLAIMANT
CONWAY HUMAN DEVELOPMENT CENTER, EMPLOYER	RESPONDENT
PUBLIC EMPLOYEE CLAIMS DIVISION, CARRIER/TPA	RESPONDENT

OPINION FILED JUNE 13, 2011

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

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

Respondents represented by the HONORABLE TERRY LUCY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed February 15, 2011.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed on July 20, 2005, when the claimant sustained a neck injury.
3. The claimant reached maximum medical improvement on December 9, 2008, for her neck injury.

4. The claimant's temporary total disability rate is \$385.00 and her permanent disability rate is \$289.00.
5. This claim for a back injury has been controverted in its entirety.
6. The respondents paid permanent partial disability from December 10, 2008, through June 16, 2009.
7. The claimant has failed to establish by a preponderance of the credible evidence that she sustained a compensable back injury, arising out of and in the course of her employment with the respondent-employer on July 20, 2005.
8. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

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 dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the claimant did sustain a compensable back injury on July 20, 2005, and I would award benefits accordingly.

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).

In July of 2005, the claimant worked as a Life Skill Trainer I. Her job duties entailed working with residents who had developmental disabilities. She helped dress, feed, groom, and transport residents. The claimant also had to use restraints, papoose boards, and straitjackets on aggressive residents.

According to the claimant, she worked as a floater, wherein she provided assistance to various units. She worked with both adults and juveniles.

The claimant denied any problems with her neck or back prior to July 20, 2005. She also denied any problems performing any of her job duties at the respondent prior to July 2005, nor did she have any limitations.

On July 20, 2005, the claimant worked the midnight till 8:00 a.m. shift. According to the claimant, she was injured while assisting a patient. The claimant testified that, when the patient stood up, his upper body collapsed. She further testified that she went down on one knee, and the patient kind of doubled over on her, and her head went forward. According to the claimant, the two struggled against each other, but she managed to push the patient off of her, onto the bed.

The claimant testified that, at the time of this incident, she weighed approximately 130 pounds, and this adult patient weighed some 350 to 400 pounds. The respondents accepted as compensable a neck injury resulting from this incident. According to the claimant, she also consistently complained of a back injury.

On January 6, 2006, the claimant finally had an MRI of her lumbar spine. The MRI clearly shows that she suffered "mild diffuse disc bulges at the L4/5 and L5/S1 level, producing minimal to mild bilateral anterior/inferior neural foraminal narrowing at these levels." Dr. Reza Shahim, while still concentrating more on the neck, notes that there is a small disc protrusion at the L5-S1 level, but then is more worried about the treatment for the collapsing disc in the cervical area. This bulging disc, as evident by the first lumbar MRI six months after the incident, clearly meets the requirement of an objective finding and internal physical injury requiring medical services of a lumbar injury, under A.C.A. §11-9-102. The requirements of a specific injury and within the course and scope of the Act are also met through the claimant's credible testimony that a 300-pound to 400-pound man fell over on her. In fact, it is undisputed, as the cervical injury was accepted.

The majority, by affirming and adopting the opinion of the Administrative Law Judge, denies this claim because the

Administrative Law Judge found, due to incidents reported in the medical record, that the claimant is not a credible witness. I disagree. The claimant's testimony at the hearing was consistent and credible. As for the incidents in the medical record, I do not find it uncommon, or incredible, for a person in pain to exhibit pain behavior, especially when in a medical setting. I do not find these incidents to be a sufficient basis for the majority to deny this claim.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner