

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. F902977

RICHARD D. KING, EMPLOYEE	CLAIMANT
RED ROCK OIL FIELD HAULING, LLC, EMPLOYER	RESPONDENT
ARCH INSURANCE COMPANY, CARRIER/TPA	RESPONDENT

OPINION FILED JANUARY 28, 2011

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

Claimant represented by the HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE BETTY HARDY, 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 July 9, 2010.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant's Proffered Exhibit 2 will be admitted into evidence and given due weight.

4. Claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his right shoulder in the form of a contusion.
5. Claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his right arm or hand, or to his right shoulder in the form of a rotator cuff tear.
6. Claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits.
7. Claimant has proven by a preponderance of the evidence that the treatment he underwent for his right shoulder contusion was reasonable and necessary.
8. Claimant has failed to prove by a preponderance of the evidence that the balance of his treatment was reasonable and necessary.
9. Claimant has failed to prove by a preponderance of the evidence that he is entitled to a controverted attorney's fee.

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 concurs, in part, and dissents, in part.

**CONCURRING AND DISSENTING OPINION**

After my de novo review of the entire record, I must respectfully dissent from the majority opinion, because I find that the claimant has proven by a preponderance of the evidence that he sustained a right shoulder rotator cuff injury, for which he is entitled to medical and indemnity benefits, as well as an attorney's fee. I concur with the majority finding that the medical treatment of the claimant's shoulder contusion was reasonable and necessary.

I find that the claimant proved by a preponderance of the evidence that, while in the course and scope of his employment with the respondent-employer, he slipped and fell into a filter box, striking his shoulder. His description of this incident is consistent with the testimony of Chris Wagoner, who saw it happen. The claimant immediately reported the incident to David Cliff. The claimant also reported a fall to Dr. Johnson,

who saw him as a workers' compensation patient at the direction of the employer, on March 20, 2009. Dr. Johnson saw the claimant on March 23, 2009, stating that the claimant had a "significant contusion" to his shoulder when seen on March 20. On March 27, 2009, the claimant gave a history of falling into a steel box for an MRI history questionnaire. Likewise, the claimant saw Dr. Nichol for pain management on October 20, 2009, reporting right shoulder pain and rotator cuff repair arising out of an on-the-job injury. In Dr. Nichol's deposition, he stated that the rotator cuff tear "typically" occurred where a person had external rotation of the abduction of the arm, which was consistent with the claimant's fall into the filter box.

I recognize that the claimant reported intermittent right shoulder pain, stabbing and short-lived, in July 2008 at the Veteran's Hospital. I note that this is the only mention of right shoulder pain, despite extensive medical care, until March 19, 2009, when the claimant presented to Dr. Bowlin for an appointment scheduled prior to the on-the-job injury and on his private insurance. The claimant had a history of left shoulder pain due to work and a fall at home, which required injections to treat. It is not inconsistent with his history that the claimant would also develop shoulder pain on the right due to his work. Further, the claimant was honest with Dr. Johnson that he had prior pain. Given the claimant's description of the mechanism of

injury, which according to Dr. Nichol is "typical" for rotator cuff tears, Dr. Johnson suspected a tear, noting in particular the "significant contusion" to his right shoulder. The record substantially supports a finding that, while the claimant suffered some right shoulder pain prior to March 16, 2009, on that date, he fell against the filter box, incurring both a contusion and the rotator cuff tear.

I would award the claimant medical and indemnity benefits, and an attorney's fee, because after my de novo review of the entire record, I find that he has proven by a preponderance of the evidence that he sustained a right shoulder rotator cuff injury.

For the foregoing reasons, I must respectfully dissent, in part, and concur, in part, from the majority opinion.

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PHILIP A. HOOD, Commissioner