

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F909590 & F909602

CYNTHIA MATTIX,  
EMPLOYEE

CLAIMANT

EXPRESS PERSONNEL SERVICES,  
EMPLOYER

RESPONDENT

INSURANCE CO.-STATE OF PENNSYLVANIA,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED MARCH 18, 2011

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

Claimant represented by the HONORABLE M. SCOTT WILLHITE,  
Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and  
Adopted.

## OPINION AND ORDER

Claimant appeals an opinion and order of the  
Administrative Law Judge filed September 29, 2010. In  
said order, the Administrative Law Judge made the  
following findings of fact and conclusions of law:

1. There was an employer-employee relationship at all relevant times.
2. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable back injury arising out of and in the course of her employment with respondent.

3. The claim for benefits is respectfully denied and dismissed.

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.

The claimant alleges that she sustained compensable injuries that are governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injuries are, indeed, injuries that are covered by the Act; however, the claimant has failed to establish the elements necessary to prove these compensable injuries by a preponderance of the evidence.

Therefore we affirm and adopt the September 29, 2010 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**

After my de novo review of the entire record, I must respectfully dissent from the majority opinion. I would award the claimant benefits for her compensable back injury.

The claimant had a back injury in the 1990s and a back problem in 2003, but the records reflect no other treatment until the claimant was seen for her current complaints. The medical records do not corroborate the testimony of Beth Kirkley, the management person in charge of reporting and processing reports of injury, that the claimant had a history of congenital back problems and a need for regular MRIs. I also note that Dr. Lack's note that the claimant had been seen in the occupational health clinic one other time for back problems is not substantiated by any other records. However, the claimant testified that she had

not had problems with her back, which is supported by the medical records. The record supports a finding that, between 2003 and 2009, the claimant did not suffer from back problems.

The claimant suffered a slip and fall in April 2009, but she was not initially concerned that she had a significant injury. She reported the fall to Tim, who was her lead person, according to policy. The respondents made much of the fact that, at deposition, the claimant identified Michael as the lead to whom she reported. However, the claimant's deposition testimony was that she was not sure whether the person to whom she reported the fall was Michael, and later she remembered that she reported to Tim. The respondents had the employment records to determine who the lead person was at the time of the claimant's slip and fall, but chose not to investigate.

The claimant suffered a second fall, to her knee, within two weeks of her first fall, which she reported to Tanisha Tribble, the lead person. Tribble testified that she told Kirkley that the claimant had fallen at work and needed her medical bills covered. Tribble also testified that the claimant reported the second fall to her. Tribble stated that when she talked

to the claimant about her first fall, she was already on light duty, so the claimant and Kirkley must have discussed her injury. Tribble explained that employees were to report injuries to their lead person, who would report it to management if the employee wished. It is impossible to credit Kirkley's testimony that the claimant's work-related injury was a surprise to her, when she had placed the claimant on light duty before the second fall.

After the claimant's MRI, she spoke to Kirkley about the findings, that she had spondylosis in her spine which was aggravated by her slip and fall. Kirkley told her that they were going to keep her work injury a secret. The claimant was very worried that she would lose her job, because she had the injury. Kirkley put her on light duty for a couple weeks. The claimant testified that she kept Kirkley up-to-date on her medical condition. Kirkley's testimony that she was unaware that the claimant had a work-related injury is self-serving, because if she had admitted to telling the claimant that she would keep the injury secret and that she had not followed the company policies, her own employment would have been in jeopardy.

The claimant had a CT scan in 2004, which showed no spondylosis; however, her 2009 MRI did show spondylosis at L5. Dr. Campbell related this new finding to the claimant's fall in April 2009. She had new objective findings and new pain after her slip and fall, and surgery has been recommended for her continued and increasing pain. This is very straightforward. The facts that the lead person, Tim, failed to report her injury, and that the management person responsible for processing the claimant's report of injury and claim failed to meet her duties, are no reason to deny the claimant workers' compensation benefits.

I would award the claimant medical benefits, including the medical care she received from the date of injury through the date of the hearing and the recommended care of Dr. Campbell.

For the foregoing reasons, I must respectfully dissent from the majority opinion.

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PHILIP A. HOOD, Commissioner