

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F809091

LEAH PIERSON,
EMPLOYEE

CLAIMANT

OZARK NATURAL FOOD,
EMPLOYER

RESPONDENT

NATIONWIDE MUTUAL INSURANCE,
INSURANCE CARRIER

RESPONDENT

ORDER FILED JULY 18, 2011

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

Claimant represented by the HONORABLE MARK J. FREEMAN,
Attorney at Law, Fayetteville, Arkansas.

Respondent represented by the HONORABLE RANDY P. MURPHY,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals and respondents cross-appeal an
opinion and order of the Administrative Law Judge filed
December 20, 2010. In said order, the Administrative
Law Judge made the following findings of fact and
conclusions of law:

1. The stipulations agreed to by the parties at
the pre-hearing conference conducted on July
21, 2010, and contained in a pre-hearing order
filed July 22, 2010, are hereby accepted as
fact.

2. The claimant failed to prove by a preponderance of the evidence that she suffered a compensable jaw injury in the form of TMJ as a result of her October 2007 work injury.
3. The claimant has proven by a preponderance of the evidence that she suffered a compensable aggravation to her pre-existing cervical difficulties as a result of her October 2007 work injury.
4. The claimant has proven by a preponderance of the evidence that she is entitled to reasonable and necessary medical treatment for her cervical aggravation.
5. The claimant failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits from May 5, 2010, to September 21, 2010.
6. The claimant has failed to prove by a preponderance of the evidence that she is entitled to an attorney's fee 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.

Therefore we affirm and adopt the December 20, 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.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney concurs in part and dissents in part.

CONCURRING DISSENTING OPINION

I respectfully concur in part and dissent in part from the majority's opinion. Specifically, I concur in the majority's finding that the claimant failed to prove by a preponderance of the evidence that she sustained a compensable jaw injury in the form of TMJ, a finding that the claimant has failed to prove by a preponderance of the evidence that she was entitled to temporary total disability benefits from May 5, 2010 to September 21, 2010 and a finding that the claimant's attorney was not entitled to a fee. However, I must respectfully dissent from the majority's opinion finding that the claimant has proven by a preponderance of the evidence that she

sustained a compensable aggravation of her pre-existing cervical difficulties and awarding medical treatment. In my opinion, the claimant has failed to meet her burden of proof.

In my opinion, a review of the evidence fails to demonstrate that the claimant sustained a compensable aggravation to her cervical difficulties as a result of the October 2007 work-related injury. The evidence demonstrates that the claimant has had neck problems on and off for 13 years. Both Dr. Blankenship and Dr. Tomlinson agree that the claimant has cervical spondylosis, a degenerative condition and scoliosis prior to the incident. In fact, as early as January 6, 1990, the claimant's medical records indicates that the claimant complained of some sort of neck pain.

It is apparent to me, that the claimant has experienced neck pain for a very long time and has previously been diagnosed with scoliosis. The claimant has significant cervical degenerative conditions and has experienced neck pain for the majority of her life. As such, the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable aggravation of her pre-existing condition. Therefore, for all the reasons set forth herein, I must

respectfully dissent from the majority's award of
benefits.

KAREN H. MCKINNEY, Commissioner