

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G008903

DORIS VENTURA, EMPLOYEE	CLAIMANT
RANDSTAD NORTH AMERICA, EMPLOYER	RESPONDENT
INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, CARRIER/TPA	RESPONDENT

OPINION FILED OCTOBER 10, 2011

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

Claimant represented by the HONORABLE RANDOLPH SHOCK, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE TOM HARPER, JR., Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed April 6, 2011.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On August 17, 2010, the relationship of employee-employer-carrier existed between the parties.
3. On August 17, 2010, the claimant earned wages sufficient to entitle her to weekly compensation

benefits of \$197.00 for total disability and \$154.00 for permanent partial disability, should such benefits have been appropriate.

4. The claimant has failed to prove by the greater weight of the credible evidence that she sustained compensable injuries to her cervical spine, left shoulder, and/or left arm, on August 17, 2010. Specifically, the claimant has failed to establish by medical evidence, which is supported by objective findings, the actual existence of any physical injury or condition involving her left shoulder or left arm, as required by Ark. Code Ann. § 11-9-102(4) (D). The claimant has also failed to prove by the greater weight of the credible evidence that she sustained any physical injury to her cervical spine on August 17, 2010, that arose out of and occurred in the course of her employment with the respondent, that was caused by a specific incident, and that is identifiable by the time and place of occurrence, as required by Ark. Code Ann. §11-9-102(4) (A) (1).
5. The respondents have denied the occurrence of any compensable injury to the claimant's cervical spine, left shoulder, or left arm, and have controverted this claim in its entirety.

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 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. I specifically concur with the finding that there are no objective findings showing that the claimant has a left shoulder or left arm injury. However, after a de novo review of the record, I find that the claimant has proved, through her credible testimony, corroborated by the medical record, that she sustained a compensable specific incident cervical injury on August 17, 2010, while lifting a Kahlua box.

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).

The Administrative Law Judge, affirmed and adopted by the majority, correctly found that the claimant has objective findings of a cervical injury that required medical services. Both Dr. John McMurry and Dr. Keith Holder have generated medical reports containing objective findings. Dr. Holder has diagnosed segmental dysfunction of the cervical spine with accompanying myalgia, neuralgia, and muscle spasms from C1 through C7. Dr. Holder diagnosed a cervical strain with associated radicular pain into the left shoulder and arm. In his final report of October 19, 2010, Dr. Holder also diagnosed degenerative cervical discs and cervical spondylosis. These diagnoses are further supported by objective findings, in the form of muscle spasms that were noted by Dr. McMurry, and X-ray studies which were performed on September 7, 2010 at the request of Dr. Holder.

As for the rest of the elements comprising a

compensable specific incident injury, the claimant has given an entirely consistent history of the Kahlua box incident on at least four different occasions. When the claimant first sought medical treatment on her own on September 3, 2010, the chiropractor recorded: "Onset: Three weeks ago, while lifting a 50 lbs. box." When the claimant signed off on the Accident Investigation Report on September 8, 2010, the injury description was: "Doris hurt her left arm lifting boxes to put on the line." When she saw her authorized treating physician on September 7, 2010, he records: "Reports pain in the left upper back, neck and posterior shoulder. Been present since 8/17/10. She was pushing a 45-pound box of liquor onto a rolling line when reported left upper back and neck discomfort." In her deposition on August 17, 2010, the claimant described the incident as:

I - I grabbed a box of Kahlua and I - I picked it up and turned to put it on the line and felt like my arm cracked, like there was a cracking. And I - and I was doing like this. I couldn't stand it. I felt like an electric charge (in the left arm).

Each of these versions of the incident are entirely consistent, given at various times, to either treating physicians or under the adversarial examination of opposing counsel. Likewise, each of those versions of the incident are entirely consistent with her testimony at trial.

There is simply no basis on this record to question the consistency of the claimant's given history of the August 17,

2010 event. Furthermore, the fact of the injury is corroborated by the existence of muscle spasms noted by her chiropractor, authorized treating physician, and physical therapist, as well as abnormal x-ray studies of the cervical spine.

As such, I find that the claimant has proved by a preponderance of the evidence that she sustained a compensable specific incident cervical injury on August 17, 2010, while lifting a Kahlua box.

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

PHILIP A. HOOD, Commissioner