

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F906034

CHERYL YEDRYSEK, EMPLOYEE	CLAIMANT
BEST WESTERN SHERWOOD INN, EMPLOYER	RESPONDENT
UNION STANDARD INS. CO., INSURANCE CARRIER	RESPONDENT

OPINION FILED JANUARY 31, 2011

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

Claimant represented by the HONORABLE EDDIE H. WALKER,
JR., Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE GUY ALTON WADE,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of
the Administrative Law Judge filed September 30, 2010.
In said order, the Administrative Law Judge made the
following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation
Commission has jurisdiction of this
claim.
2. On July 3, 2009, the relationship of
employee-employer-carrier existed
between the parties.

3. On July 3, 2009, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$155.00 for total disability and \$154.00 for permanent partial disability.
4. On July 3, 2009, the claimant sustained a compensable injury to her left knee in the form of a tear of the lateral and medial menisci. Specifically, the claimant has established by medical evidence, which is supported by objective findings, the actual existence of this physical injury or damage. Further, she has proven by the greater weight of the credible evidence that this physical injury or damage satisfies all of the statutory requirements for a "compensable injury" set out in Ark. Code Ann. §11-9-102(4)(A)(i).
5. The medical services provided to the claimant for her left knee difficulties by and at the direction of Dr. Robert Noonan and Dr. Bruce Brown represent "reasonably necessary medical services" for her compensable injury. Pursuant to the provisions of Ark. Code Ann. §11-9-508, the respondents are liable for the expense of these services.
6. The claimant has proven by the greater weight of the credible evidence that she was rendered temporarily totally disabled by the effects of her compensable injury for the periods of July 4, 2009 through August 28, 2009 and February 5, 2010 through March 23, 2010. Specifically, she has proven that during these intervals she continued within her healing period from the effects of her compensable injury and had not "returned to work".
7. The respondents have controverted the claim in its entirety.
8. The appropriate fee for the claimant's attorney is the maximum statutory

attorney's fee on the controverted temporary total disability benefits herein awarded.

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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the September 30, 2010, decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as

amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I respectfully dissent from the majority's opinion finding that the claimant proved by a preponderance of the evidence that she sustained a compensable injury. In my opinion, the claimant has failed to meet her burden of proof.

The claimant was employed by the respondent employer as a housekeeper. The claimant's job included stripping beds, cleaning rooms, making beds and other

chores including cleaning up around the grounds and trash. The respondent employer's place of business is a two-story hotel which required the claimant to walk up and down stairs. On July 3, 2009, the claimant stated that she was walking downstairs to the pool when she felt a sharp pain in her left knee and it caused excruciating pain. The claimant stated that she also heard and felt a pop. The claimant was diagnosed with torn lateral and medial meniscus of her left knee. She underwent surgery in February of 2010. The claimant is requesting the respondents pay benefits associated with this surgery including temporary and total disability for two periods. Based upon my de novo review of the record, I cannot find that she sustained a compensable injury.

Ark. Code Ann. §11-9-102(4) (A) (i) (Supp. 2005) defines "compensable injury" as "[a]n accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence. Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002). The phrase "arising out of the employment" refers to the origin or

cause of the accident, so the employee is required to show that a causal connection exists between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). An injury occurs "in the course of employment" when it occurs within the time and space boundaries of the employment, while the employee is carrying out the employer's purpose, or advancing the employer's interest directly or indirectly. City of El Dorado v. Sartor, 21 Ark. App. 143, 729 S.W.2d 430 (1987).

In addition to establishing the general requirements for compensability set forth in §11-9-102(4)(A)(i), the claimant must establish a compensable injury by medical evidence, supported by objective findings as defined in §11-9-102(16). That a compensable injury be established by medical evidence supported by objective findings applies only to the existence and extent of the injury. Stephens Truck Lines v. Millican, 58 Ark. App. 275, 950 S.W.2d 472 (1997). "Objective findings" are those that cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16). Moreover, objective medical evidence, while necessary to establish the existence and extent of an injury, is not necessary to establish a causal relationship between the injury and the work-related accident. Wal-Mart Stores,

Inc. v. VanWagner, 337 Ark. App. 443, 990 S.W.2d 522 (1999). The onset of pain does not satisfy our statutory criteria for benefits. Test results that are based upon the patient's description of the sensations produced by various stimuli are clearly under the voluntary control of the patient and therefore, by statutory definition, do not constitute objective findings. Duke v. Regis Hair Stylists, 55 Ark. 327, 935 S.W.2d 600 (1996). Finally, medial opinions addressing compensability and permanent impairment must be stated within a reasonable degree of medical certainty. Ark. Code Ann. §11-9-102(16) (i) (B); Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000).

There is no presumption that a claim is indeed compensable. O.K. Processing, Inc., et al v. Servold, 265 Ark. 352, 578 S.W.2d 224 (1979). Crouch Funeral Home, et al v. Crouch, 262 Ark. 417, 557 S.W.2d 392 (1977). The injured party bears the burden of proof in establishing entitlement to benefits under the Workers' Compensation Act, and must sustain that burden by a preponderance of the evidence. See Ark. Code Ann. § 11-9-102(4) (E) (i) (Repl. 2002); Clardy v. Medi-Homes LTC Serv. LLC, 75 Ark. App. 156, 55 S.W.3d 791 (2001). In other words, in a workers' compensation case, the claimant has the burden of proving by a preponderance of

the evidence that her claim is compensable, ie., that her injury was the result of an accident that arose in the course of her employment and that it grew out of, or resulted from the employment. Carman v. Haworth, Inc., 74 Ark. App. 55, 45 S.W.3d 408 (2001); Ringier Am. v. Combs, 41 Ark. App. 47, 849 S.W.2d 1 (1993). Further, the claimant must show a causal relationship exists between her condition and her employment. Harris Cattle Co. v. Parker, 256 Ark. 166, 506 S.W.2d 118 (1974).

It is well established that the party having the burden of proof on the issue must establish it by a preponderance of the evidence. Ark. Code Ann. § 11-9-704(c) (2) (Repl. 2002). A preponderance of the credible evidence of record means "evidence of greater convincing force." Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995); See also, Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 206 S.W.2d 42 (1947). In determining whether a claimant has sustained his or her burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. § 11-9-704; Wade v. Mr. C Cavanaugh's, 298 Ark. 363, 768 S.W.2d 521 (1989); and Fowler v. McHenry, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

The evidence indicates that prior to the claimant's alleged incident on July 3, 2009, the claimant had reported complaints with her left knee for two to three months before this incident. The claimant had been observed limping and favoring her knee. Specifically, Kim Thomas, Front Desk Manager, stated that she had observed the claimant limping. In fact, on the morning of this alleged incident when the claimant and her co-workers gathered before the work started, Ms. Thomas inquired of the claimant's ability to perform her job duties on that date.

The claimant has also been diagnosed with chondromalacia over the medial femoral condyle in the patella. This is a degenerative condition and certainly pre-existed any alleged injury on July 3, 2009. In my opinion, it requires speculation and conjecture to conclude that there was a specific event that caused the claimant's meniscal tear. Conjecture and speculation, even if plausible, cannot take the place of proof. Ark. Dept. of Correction v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991); Dena Constr. Co., et al v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979); Arkansas Methodist Hosp. v. Adams, 43 Ark. App. 1, 858 S.W.2d 125 (1993). Therefore, for all the reasons set forth herein, I

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10

respectfully dissent from the majority's award of
benefits.

KAREN H. MCKINNEY, Commissioner