

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F307194

DALE W. CLARK, EMPLOYEE CLAIMANT

COOPER TIRE & RUBBER COMPANY,  
SELF INSURED, EMPLOYER RESPONDENT

CROCKETT ADJUSTMENT,  
INSURANCE CARRIER RESPONDENT

**OPINION FILED JUNE 21, 2004**

Hearing conducted before Administrative Law Judge C. MICHAEL WHITE in  
Texarkana, Miller County, Arkansas.

The claimant was represented by NELSON V. SHAW, Attorney at Law,  
Texarkana, Texas.

The respondents were represented by WILLIAM G. BULLOCK, Attorney at  
Law, Texarkana, Texas.

**OPINION AND ORDER**

A hearing was held in this matter on March 23, 2004. A prehearing  
conference was conducted on December 16, 2004, and a prehearing order  
was filed on December 16, 2004. A copy of the prehearing order has been  
marked as Commission Exhibit No. 1 and made a part of the record without  
objection.

During the prehearing conference, the parties agreed to the following  
stipulations:

1. The employer/employee/carrier relationship existed on  
March 3, 2003.
2. The claimant sustained a compensable injury on March 3, 2003.

3. The claimant was earning sufficient wages to entitle him to the maximum compensation rate.

During the prehearing conference, the parties also agreed that the issues to be litigated at the hearing were limited to the following:

1. Whether the claimant is entitled to additional temporary total disability compensation.
2. Whether additional medical treatment is reasonably necessary and causally related to the claimant's compensable injury.
3. Whether respondents are entitled to an offset.

From a review of the record as a whole, to include the testimony of the claimant, and Jason Johnson, as well as the medical records and other documentary evidence, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. § 11-9-704 (Cumm. Supp. 1997).

### **FINDINGS AND CONCLUSIONS**

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties and set forth above are hereby accepted as fact.
3. I find that the claimant has failed to prove by a preponderance of the evidence that the problems he is experiencing are causally related to any incident that occurred on March 3, 2003
4. I find that the claimant failed to prove by a preponderance

of the evidence the elements necessary to establish a compensable injury under the Arkansas Workers' Compensation Law.

5. The respondents controverted this claim in its entirety.

### DISCUSSION

The claimant began working for the respondent on August 17, 1992, and he has worked at a variety of jobs while employed there. On March 3, 2003, he was employed as a stock trucker and his duties involved driving a forklift to deliver materials to the millroom machines. While performing his duties on March 3, 2003, he "pushed rubber up a little too far," and his forklift went up onto the pallet, which was approximately five inches high. As the claimant was driving the forklift off of the pallet, he was looking behind him, as well as turning his head to look to each side in front of him and as he was driving off of the pallet his neck popped while he was looking back. According to the claimant's testimony this popping occurred on the left central portion of his neck just as the forklift hit the ground. He testified that he began to experience "a very, very sharp pain..." that radiated into his left hand. According to the claimant's testimony he had never experienced a pain "quite like that one" before. He immediately turned his forklift off and reported the incident to his supervisor.

The claimant was referred to the company doctor, Dr. Gregory A. Richter. The evidence submitted into the record indicates that the claimant was complaining of neck and left shoulder pain and Dr. Richter diagnosed a cervical and left shoulder strain. X-rays taken at that time revealed mild discogenic degenerative disease at the C5-C6 level as well as evidence of a prior surgical discectomy at the C6-C7 level. X-rays of the claimant's left shoulder revealed no abnormalities. On March 5, 2003 the claimant was seen by Dr. John Nix. Dr. Nix recommended a MRI. Dr. Nix prescribed pain medication. The claimant returned to Dr. Richter on March 12, 2003, and Dr. Richter reported that the claimant was still complaining of considerable pain. Dr. Richter's report indicates that the claimant asked to be returned to regular duty, which Dr. Richter authorized. On March 19, 2003 a MRI was performed. This MRI revealed a focal disc protrusion on the left at the C4-C5 levels which resulted in neural foraminal encroachment. The MRI also revealed post-operative and degenerative changes at C5-C6, and C6-C7 levels. The reports indicate that the overall findings were resulting in mild central spinal stenosis and cord flattening.

The claimant continued to be followed by Dr. Richter, who continued to treat him conservatively with pain medication. Ultimately Dr. Richter referred the claimant to Dr. Reza Shahim, a neurosurgeon, who first saw the claimant

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on April 15, 2003. After examining the claimant Dr. Shahim opined that the claimant was symptomatic from the cervical spondylosis at C5-C6 and C4-C5, and he opined that the pre-existing condition had been aggravated by a work injury. Dr. Shahim prescribed physical therapy. The claimant returned to Dr. Shahim on June 2, 2003 and Dr. Shahim's report indicates that the claimant continued to complain of posterior cervical pain and interscapular pain as well as left arm pain. Dr. Shahim recommended that the claimant avoid surgery and he recommended that the claimant continue with physical therapy.

The claimant continued to be followed by Dr. Richter and Dr. Richter's records indicates that the claimant continued to complain of pain, indicating that he was not experiencing any improvement.

At the claimant's request, Dr. Richter referred the claimant to Dr. George Beach, a specialist in Shreveport, Louisiana. The claimant saw Dr. Beach on September 5, 2003. Dr. Beach's report indicates that he had not been provided information or records pertaining to the multiple problems that the claimant had experienced prior to March 3, 2003. As a result of this lack of information, Dr. Beach terminated the visit and advised the claimant that he "was not willing to read a book, when so many chapters were missing." He recommended that the claimant return to the physician who had primarily treated him for his prior problems.

Claimant returned to Dr. Richter on September 17, 2003, and Dr. Richter's report indicates that the claimant was complaining of worsening pain in his neck.

On September 20, 2003 the claimant saw Dr. Michael Young, the surgeon who had performed the prior surgery on the claimant. Dr. Young recommended that the claimant seek treatment in Texarkana. In doing so, Dr. Young noted that "[w]e had problems in the past and I would rather not get involved again." On October 22, 2003 another MRI on the claimant's cervical spine was performed on the recommendation of Dr. Richter. This MRI did not reveal any significant changes.

On October 29, 2003 the claimant presented to the Bonati Institute for Advanced Arthroscopic Spinal Surgery in Florida. After examining the claimant and reviewing his history it was determined that the claimant suffered from cervical spine pain with symptoms of radiculopathy, post-surgical fusion at C6/C7 and possible carpal tunnel syndrome in the left wrist. Additional MRIs were performed at the Bonati Institute which revealed bulging disc at C5/C6 and C6-C7. Degenerative disc disease at C5/C6, spinal stenosis at C3/C4, C4/C5, C5/C6, and C6/C7 with evidence of the prior laminectomy with scar tissue at C6/C7 and a non-healing fusion at C6/C7. On November 3, 2003 the claimant underwent a cervical laminectomy with a foraminotomy at the

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C4/C5 level on the left. On November 10, 2003 the claimant underwent a laminectomy and foraminotomy at C5/C6 on the left. A report from the Bonati Institute dated November 13, 2003 indicated that the claimant reported marked improvement as a result of these procedures. The claimant returned to his home in Arkansas; however, the Bonati Institute, or Gulf Coast Orthopedic Center, phoned the claimant once a week to assess his condition. Although the claimant continued to complain of some problems, the reports indicate that his condition was improved and the problems were attributed to the fact that there was an additional level that needed surgical intervention. On January 5, 2004 the claimant returned to Dr. Richter for a follow-up visit. Dr. Richter's notes indicated that the claimant complained of stiffness in his lower back. The claimant also complained of some problems with tremors and seizure like activity, and the claimant indicated that the seizure like activity began about the same time as the March 3, 2003 incident. I also note that the claimant's treating physicians have indicated that the claimant was dependent on narcotic drugs and anti-anxiety drugs, and I note that this dependency pre-existed March 3, 2003.

As indicated above, the claimant has a rather long history of neck problems that pre-existed March 3, 2003. In this regard the claimant was involved in a motor vehicle accident during September of 1991. On

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September 26, 1991 the claimant sought treatment at the emergency room for complaints of neck and back pain, which he related to the motor vehicle accident. On April 24, 1996, in the course of his employment with the respondent, the claimant experience a pop in his neck while throwing a tire over his head. He was treated by Dr. Clevenger, who diagnosed a cervical strain. The medical records indicate that throughout the remainder of 1996 the claimant frequently requested narcotic medication and anxiety medication from multiple physicians and the records indicate that his physicians were refusing to provide this medication. The claimant was involved in another motor vehicle accident on June 15, 1997 and he sought treatment from Dr. Davis on June 16, 1997 for complaints of left shoulder pain. The claimant was again seen at the emergency room on February 10, 1998 after having been involved in another motor vehicle accident. The medical reports indicate that the claimant complained of pain in his neck, shoulder and low back. He was prescribed pain medication and released. The medical records indicated that the claimant continued to exhibit an overt dependence on narcotic medication as well as anti-anxiety medication throughout 1998. On June 9, 1999 the claimant sought chiropractic treatment, which he indicated on a patient information form was not due to an accident. The claimant primarily described the symptoms as having carpal tunnel syndrome and that he had received

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prior treatment from Dr. Knight and from Richter for carpal tunnel syndrome. On the patient information form he also indicated that he had experienced neck pain, upper back pain and stiffness in his neck. The claimant's subjective complaints were listed as neck pain and wrist numbness. The chiropractic report indicates that the clinical examination revealed mild spasm throughout the cervical spine with restricted range of motion on the left. The claimant returned to Dr. Richter on July 8, 1998 for a follow-up of his carpal tunnel syndrome. Dr. Richter's report indicates that the claimant is in the process of seeing an orthopedic surgeon to consider an operative procedure. On December 4, 1999, the claimant was seen by Dr. Nix for complaints of cough and sinus drainage and the report of that visit indicates that Dr. Nix also expressed concern to the claimant about his use of anti-anxiety medication. The claimant also saw Dr. Nix in early 2002 with complaints of back discomfort in addition to his anxiety complaints. On June 20, 2000 the claimant was seen by Dr. Ditsch for an evaluation of his carpal tunnel syndrome. Dr. Ditsch's report indicates that it was apparent the claimant was there seeking pain medication and that the claimant became very defensive when Dr. Ditsch questioned him about his use of pain medication. The report also indicates that the claimant became very dissatisfied with Dr. Ditsch when he refused to prescribe any narcotics for him.

On June 21, 2000 the claimant returned to Dr. Richter for a follow-up of his carpal tunnel complaints. The reports also indicate that the claimant reported recently straining his left neck and shoulder. Dr. Richter diagnosed a cervical strain. On July 21, 2000 the claimant was seen by Dr. Gregory with complaints of having difficulty with both hands going numb and with pain radiating up into his neck and left arm. Dr. Gregory indicated that it was difficult to determine whether the claimant was experiencing carpal tunnel syndrome, or if a cervical radiculopathy was causing claimant's problems. Dr. Gregory scheduled a cervical MRI; however, the reports indicated that the claimant's wife contacted Dr. Gregory's office and advised that they did not want the MRI and that they wanted the claimant treated for carpal tunnel syndrome. The report indicates that the claimant's spouse specifically stated that they did not want his neck treated. Nevertheless, the MRI was performed at some point and a report from Dr. Gregory dated August 7, 2000 indicates that the MRI revealed abnormalities at C6 and C7. On August 15, 2000 the claimant was seen at the NE Texas Surgical Center when he underwent a carpal tunnel release. The claimant saw Dr. Gregory on September 15, 2000 for a follow-up on his carpal tunnel surgery. Dr. Gregory's notes indicated that he discussed with the claimant the large amounts of pain medication that he was obtaining from multiple physicians. The report also indicates that the

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claimant informed Dr. Gregory that he knew what he was doing with his life and that he was not interested in addressing this problem. The claimant was released from Dr. Gregory's care at that time.

On September 28, 2000 the claimant was seen by Dr. Michael Young, an orthopedic surgeon, with complaints of left arm pain. Dr. Young's report notes that the MRI taken during July of 2000 revealed a herniated nucleus pulposus at the C6-C7 level. Dr. Young performed an anterior cervical discectomy and fusion at C6-7.

The medical reports, as well as the testimony, indicates that the claimant continued to experience pain and other difficulties related to his cervical spine. Subsequent to the surgery, on May 5, 2001 the claimant sought treatment from Dr. Nix for complaints of upper back pain. Dr. Nix's report indicates that the claimant was requesting refills of pain medication and anti-anxiety medication. On July 3, 2001 the claimant saw Dr. Nix again and Dr. Nix's report indicates that the claimant stated that he had been experiencing problems with his neck and that he had recently experienced a pop in his neck. Dr. Nix determined that the claimant continued to experience chronic neck pain and anxiety. On August 11, 2001 a MRI was performed. Other than evidence of the prior surgery, this MRI revealed a "a component of mild bony encroachment upon the neural foramina on the left at the C3-4 and

C4-5 levels." On August 13, 2001 the claimant was seen by Dr. Richter for complaints that included symptoms related to the claimant's cervical spine. Dr. Richter diagnosed a cervical sprain with a questionable herniated disc in the cervical spine. On December 4, 2001 the claimant was seen by Dr. Nix for complaints of pain in his back, neck, and arm with the pain primarily being on the left side. On January 3, 2002 the claimant presented to Dr. Nix, indicating that he had been involved in a motor vehicular accident on December 26, 2001, when the vehicle in which he was riding was hit from behind by another vehicle. Dr. Nix's report indicates that the claimant was complaining of significant pain in his upper back, which radiated into his left arm. A MRI of the claimant's thoracic and cervical spine was performed on January 7, 2002. The claimant saw Dr. Nix again on October 31, 2002 with complaints that involved chronic neck discomfort.

The medical records also indicate that the claimant continued to seek medical treatment for complaints involving his neck and upper extremity until shortly before March 3, 2003. In this regard, on January 9, 2003 the claimant sought treatment from Dr. Nix for complaints of pain in his neck and back. Dr. Nix's report indicates that the claimant was requesting pain medication at that time. The claimant returned to Dr. Nix again on February 6, 2003 complaining of problems with his neck on the left side. The claimant again returned to Dr.

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Nix on February 20, 2003 and Dr. Nix indicated that he had a long talk with the claimant due to his use of pain medications throughout his years as a patient of Dr. Nix. Dr. Nix indicated that he was refilling his pain medication at that time; however, Dr. Nix also indicated that he was going to gradually wean the claimant off the medication.

Since the claimant contends that he sustained an injury after July 1, 1993, this claim is controlled by the Arkansas Workers' Compensation Law as amended by Act 796 of 1993. Consequently, to establish the compensability of the claim, the claimant must satisfy the requirement for establishing one of the five categories of compensable injuries recognized by the amended law, including the requirements common to all categories of injuries. See, Jerry D. Reed v. Con Agra Frozen Foods, Full Workers' Compensation Commission, Opinion filed Feb. 2, 1995 (Claim No. E317744). Since the claimant in the present claim alleges that he sustained an injury as a result of a specific incident which is identifiable by time and place of occurrence, the requirements of Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997) are controlling, and the following requirements must be satisfied:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment (see, Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997); Ark. Code Ann. § 11-9-102(4)(E)(i) (Cumm. Supp. 1997); see also, Ark. Code Ann. § 11-9-401(a)(1) (Cumm. Supp. 1997));

(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 (see, Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997));

(3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the injury (see, Ark. Code Ann. § 11-9-102(4)(D) (Cumm. Supp. 1997));

(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 (see, Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997)).

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, he fails to establish the compensability of the claim, and compensation must be denied. Reed, supra.

In the present claim I find that the claimant failed to prove by a preponderance of the evidence that his current problems are causally related to any incident that occurred on March 3, 2003. In this regard, as discussed above, the claimant has a long history of problems relating to his cervical spine and left extremity. Although the claimant testified at the hearing conducted in this matter that the problems he began experiencing on March 3, 2003 were different from the problems that he was experiencing prior to that time, I find that his testimony in this regard is not consistent with the medical

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records. Instead, I find that the claimant's complaints prior to March 3, 2003 were indeed similar in nature and severity as those of which he complained subsequent to March 3, 2003. I note that Dr. Shahim opined that the March 3, 2003 incident caused the claimant's underlying degenerative problems to become symptomatic; however, again medical records establish that the claimant's neck problems were symptomatic for several years prior to March 3, 2003. Consequently, I find that Dr. Shahim's opinion is apparently based on an inaccurate history and entitled to little, if any, weight. Accordingly, I find that the claimant failed to prove by a preponderance of the evidence the elements necessary to establish a compensable injury under the Arkansas Workers' Compensation Law.

**ORDER**

Accordingly, based on my review of the entire record and for the reasons discussed herein, I find that this claim must be, and hereby is, denied and dismissed.

IT IS SO ORDERED.

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C. MICHAEL WHITE  
Administrative Law Judge