

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F305184

FRANK BIRD, EMPLOYEE

CLAIMANT

DUPRE TRANSPORT, EMPLOYER

RESPONDENT

ACE USA INSURANCE, CARRIER

RESPONDENT

OPINION FILE JULY 12, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ANDRE L. BLOOD, on April 15, 2005, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE JIM R. BURTON, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE MARK MAYFIELD, Attorney at Law, Jonesboro, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-styled claim to determine the claimant's entitlement to workers' compensation benefits relative to his neck and low back.

On February 15, 2005, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Frank Bird, the claimant, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Frank Dennis Bird, the claimant, with a date of birth of February 9, 1956, commenced his employment with respondents on April 18, 1995, as a transport delivery truck driver. Claimant has been a CDL/DOT licensed truck driver since 1984. Prior to becoming a licensed interstate commerce truck driver, claimant worked as a meat cutter for ten years.

Claimant acknowledged being involved in earlier motor vehicle accidents, to include a July 1998, wreck in Dustin, Florida, in which he suffered injuries to his hand, neck and low back, when the vehicle in which he was a passenger was struck from behind. Claimant asserts that he was advised by Dr. Rebecca Barrett-Tuck, a Jonesboro neurosurgeon, that he had a 50/50 chance of recovery if he had any surgery performed regarding injury, both neck and low back, suffered in the 1998 accident. As a consequence of the afore, claimant testified he elected not to have surgery, but rather had physical therapy. Claimant testified that he also received treatment from Dr. Ziegler, a chiropractor, as well as Dr. Braden and Dr. Hachbrath. Claimant's testimony reflects that he return to work in September/October 1998, following the July 1998, accident. Claimant acknowledged that by the end of October 1998, he had to take off work again due to his 1998 injuries, and that he remained out until January/February 1999. Claimant maintains that from the first part of 1999, until May 7, 2003, he did not miss any work due to either his neck or back.

In 2000, claimant's testimony reflects that he was involved in another accident in a parking lot in Jonesboro, Arkansas, in which he injured his left shoulder. Claimant maintains that he was treated by Dr. Ziegler, D.C., for the 2000 left shoulder injury, did not miss any time from work, and continued performing his regular job duties. Claimant asserts that any symptoms

he experienced in his neck and low back following the 1998 Florida accident, after he returned to work, were addressed with over-the-counter medications. Additionally, claimant maintains that he did not feel that he had any limitations of his employment activity following he release by the doctors regarding the 1998 accident.

Claimant's testimony reflects that he had driven a fuel truck (tanker) transporting petroleum products throughout his employment with respondents. The testimony of the claimant reflects, with respect to specific activities discharged in operating the tanker truck:

There is a lot of - you have to have HazMat certifications and know about hauling, you know, flammable liquids, and you know, hazardous materials - I think would be. . .

It's mandatory that you have to stick the tank - to gauge the tank to make sure the product you're delivering is going to fit in that tank without causing an EPA catastrophe or, and/or any kind of exposure, you know, to fire or anything like that.

Right, in order for it not to run out, and then after you're done delivering, you gauge the tank again and make sure that the product level is accounted for and that, you know, you write those procedures down on your invoices. (T. 9).

Claimant testified that he was trained by respondents in the above activities.

The testimony of the claimant reflects that while delivering fuel product, within the course and scope of his employment with respondents, he suffered an injuries which serve as the basis for the present claim. Specifically, claimant testified that he was a delivery to the Batesville/Panola School District and DOT Department, in Batesville, Mississippi at the time of the injury. In line with his training as a tanker driver, claimant's testimony reflects with respect to his activity at the Batesville delivery site:

On this particular site, it's an above-ground fuel tank, horizontal.

It was a 12,000-gallon capacity tank, with a baffling in the middle. It separated the diesel fuel from the gasoline, so they had two products going into one tank. In the past, that I've made the delivery there, they have a beeter root - that's B-E-E-T-E-R root, and it's a machine and you press a button on it, and it gives you a receipt ticket like a (numerical counter)

Right. It's a computer - it's a sensor inside the tank and it monitors, you know, that volume of that tank and stuff like that there. It also monitors the volume of how much product you can put into it. It's sort of a, you know, a safety precaution for both sides, and also lets the customer know, you know, how much product they did receive and so on. On this particular day that I arrived on the site, I did the normal thing. I went over to the beeter root, pressed the print button, and I got no receipt ticket come out. I heard a voice over the back of my shoulder yell at me and tell me I'm going to have to get up on the tank and stick the tank.(T. 10).

Claimant observed most above-ground fuel tanks where he made deliveries do not have indicators, and ,as a consequence, he has to walk on the tanks.

In describing the tank at the Batesville, Mississippi site, claimant estimated it to be eight to ten feet in diameter, with welded steps on the side leading to the top of the tank.

Claimant testified that the individual who informed him of the malfunctioning gauge and the need to stick the tank was the supervisor of the Panola School District bust transportation staging area. Claimant continued, with respect to the accident:

And they have their own tanks and stuff. And, as I stated, I recognized who it was and I kind of debated about it, and then I called my dispatcher over a two-way radio and let them know that I'm going to have to get up on top of the tank to gauge the tank - that the beeter root is inoperable, and they said well, just get the - my dispatcher responded and told me to just get the readings and call him back and let him know. Upon doing that, I went ahead and climbed up on the tank and made my first stick reading, called back into dispatch to ask him how much, you know, product was going to be able to be safely delivered into the tank, and he said, okay, just, you know, go ahead with it, and so I hooked up my hoses and made my delivery. After I got through, I wrapped up my hoses and turned my truck off and climbed back up on the tank and just as

I got back up on the tank and kind of scooted to my left about maybe a foot or so, and was reaching to my left - my stick was leaning against the tank. I was reaching to the left to grab the stick, and as I did that, I just started sliding off the tank, and slid straight down and hit a 50-gallon oil drum on the - it's about 4 feet high - 4 or 5 feet high - hit that with my left leg and then I flew off that in a sideward position and landed in a spread-eagle, belly-flop to the ground. (T. 12-13).

Claimant landed on a gravel surface. Claimant's testimony reflects that he was unaware if anyone saw him fall at the time it happened. Claimant testified that he managed to yell out for help, and assistance was rendered. Claimant explained that the people at the site finally came out, saw him laying on the gravel, and summoned an ambulance. Claimant was transported to the emergency room of Batesville Hospital.

Claimant testified that he was brought into the emergency room, x-rayed, prepped, his cuts and scratches cleaned, and a brace placed on his right hand. Claimant was provided some medication for pain as well as an injection. The testimony of the claimant reflects that he came under the care and treatment of Dr. Brian Dickson, a Jonesboro orthopedic surgeon, relative to his right hand and arm complaint. Claimant was ultimately seen by Dr. Bourland in Memphis, who performed surgery on the right wrist in December 2003. Regarding the status of his right hand/wrist, claimant's testimony reflects:

I still have pain and it snaps and pops and the grip is a lot less than what I used to be able to do with it. (T. 14).

Respondents acknowledged the compensability of the claimant's right wrist injury.

Claimant asserts that in addition to the right wrist injury, he also suffered injuries to his neck, and back in the May 7, 2003, accident. Regarding the development of his other symptoms attributable to the accident, claimant's testimony reflects:

Very painful symptoms. It felt like maybe there was a hatchet sticking in my neck and, you know, ice pick in my back. I couldn't walk and lift my feet practically off the ground for like three days after the fall and I had to shuffle around, you know, if I wanted to get around. Prior to - during the whole recovery ordeal there, I developed a high blood pressure condition and just whole bodily discomfort - headaches, sleepless nights, tiring days to where I am just fatigued all day long and sleepless at night. (T. 15).

Claimant's testimony reflects that he received medical treatment for his neck and back complaints from Dr. McKee, who ordered diagnostic studies, a MRI scan, and thereafter referred him to a neurosurgeon, Dr. Barrett-Tuck. Claimant maintains that following his visit with Dr. Barrett-Tuck, he was treated by Dr. Calin Savu at the Jonesboro Medical Pain Clinic. Claimant's testimony reflects that he treated with Dr. Savu for an extended period of time relative to his neck symptoms. Claimant asserts that he is now receiving Methadone for pain management.

Regarding his low back complaints of pain, which he attributes to the May 7, 2003, accident, claimant's testimony reflects:

I haven't received anything yet on the low back. They're waiting to see what kind of results I got out of this here for the neck. I haven't received anything on my low back. (T. 17).

Claimant maintains that following the May 7, 2003, accident he immediately experienced pain in his neck and low back, as well as his wrist.

Claimant returned to work as a truck driver for respondents following the May 7, 2003, injury, in September 2003. Claimant was off work pursuant to the directions of his treating physician relative to the hand injury growing out of the May 7, 2003, accident until late September 2003. The testimony of the claimant reflects that he worked most of October 2003, at which time he felt that his hand was not "feeling right", and he was continuing to experience

severe pain in his back. Claimant asserts that he returned to Dr. McKee and was off work for another period of time until April 2004.

Claimant asserts that he left the employment of respondents when Dr. McKee took his off work pending a follow-up appoint with a neurosurgeon. Claimant acknowledged that there was a disagreement regarding compensability at the time of the afore. Claimant maintains that Dr. McKee and Dr. Bourland had him off work until March 2004. Claimant's testimony reflects that he applied for and received unemployment compensation benefits for two to three weeks. Claimant testified that sought employment after realizing that he would be unable to live off the amount he was receiving in unemployment benefits.

Claimant is presently employed by Star Transportation of Jonesboro, Arkansas, as a truck driver. Claimant testified that while he is earning about the same as he earned in the employment with respondents, he is working longer hours. Claimant is performing the same kind of work in his present employment as he did while employed by respondents. Regarding his current job duties, claimant's testimony reflects:

It's a lot more exertion, because I have to crawl, you know, the manhole covers that I deliver into - most of them are on the ground at the gas stations. . . . and so on, so I have to go - I have to bend over and get the caps off and all this. Now, I just kneel down on my forwards, you know, kneel down to one knee and lift them up and stuff like this; buy, any exertion on my part is painful now and there's not a day go by, hour goes by, moment goes by, that I do not feel this aggravating pain. (T. 28).

In addition to the prior motor vehicle accidents, claimant acknowledged that he had an accident when he was younger and suffered a concussion and neck injury in California. Claimant concedes that he was seen by Dr. Deshazo, a neurosurgeon, pursuant to the recommendation of

Dr. McKee relative to the 1998 motor vehicle accident in 2001 and 2002. Claimant denied that he filed suit for injuries growing out of the parking lot accident in 2002. Claimant asserts that the parking lot accident claim was combined with the 1998 accident claim, and settled for \$100,000.00.

While claimant testified on the one hand that in 2001, he felt that he was able to do his job and tolerate the amount of pain he was experiencing, he acknowledged that he continued to take prescription medication, Amitriptyline and Zoloft. Further, claimant concedes that when he went to the emergency room following the May 7, 2003, accident he disclosed to medical personnel that he was taking Amitriptyline and Zoloft. Claimant asserts that the Zoloft was prescribed for him as a muscle relaxer because as a truck driver he could not take hard medication, narcotics.

Regarding the amount of time he was off work due to his acknowledged wrist injury versus complaints relative to his neck and back, the claimant's testimony reflects:

In one sense that is correct. The other sense, that I was waiting to get in to see a neurosurgeon, but the - all the neurosurgeons up here do not handle workman's comp claims and Dr. McKee wanted me to see one in Memphis, and workman's comp never told me that they were converting the claim and I waited around for a long period of time before I even found out that workman's comp contested the claim and that they denied me to even seeing a neurosurgeon in Memphis or anything. That's why this long period of time that I was off for that.

I just told Mr. Burton - from September, I believe it was around September to October when I went to see Dr. McKee somewhere in October, and he put me off of work pending an MRI and a neurosurgeon's evaluation, and then from that period on, I waited around to get in to see a neurosurgeon, so that took up all of November and then in December, I was referred from Dr. Dickson to Dr. Bourland in Memphis, where he treated my hand and had to do some, I believe, ligament repairs and - on my wrist. Because of the operation, I was off of work from 2000,

I believe it was sometime - I'm sorry - 2003 - December, 2003, until March, I believe, is when he released me on my hand, of 2004. (T. 35-36).

Regarding the history relayed to medical providers following the May 7, 2003, accident, claimant's testimony reflects that he felt that he had told each of his neck and back pain attributable to the accident. Claimant has no explanation for the omission of entries relative to his neck and back complaints from the records of Dr. Dickson or any other provider. Claimant testified that after he return to work following his release by Dr. Dickson he relayed complaints regarding his neck and back. Claimant's testimony reflects, with respect to his attempts to relay complaints regarding his neck from the May 7, 2003, accident:

Yeah, from the very beginning. I told - I told the paramedics there that I had had previous back and neck injuries, cause, like I said, I did not know - and I stated in my depositions and other places, that I did know that I wasn't paralyzed. I couldn't move anything, other than lift my head up. Nothing else would work, so I did not know if I was paralyzed. I never had a sensation like that before, and I tried to tell them from the moment that they bought me in to the - the paramedics arrived on the scene, until Dr. Savu's treatment, that, you know, I've had previous neck injuries and stuff of this nature. (T.45).

Claimant attributes his high blood pressure complaint to residuals of the May 7, 2003, accident, noting the he had undergone a DOT physical two weeks prior to the accident and had no problem with his blood pressure.

A review of the medical in the record reflects that following a July 21, 1998, motor vehicle accident, claimant received medical treatment for complaints relative to his wrists, and neck. Claimant relayed a history of a whiplash injury in a prior motor vehicle accident in 1977 at the time he received medical treatment for the 1998 accident. Diagnostic studied performed relative to 1998 motor vehicle accident multilevel disease in the claimant's cervical spine. (JX.

#1, p. 4). Upon returning to Arkansas claimant was treated by Dr. Robert C. Ziegler, D.C., and Dr. Sanders McKee, for complaints associated with the 1998 motor vehicle accident.

On November 3, 1998, claimant was evaluated by Dr. Rebecca Barrett-Tuck, a Jonesboro neurosurgeon, pursuant to a referral of Dr. Terence Braden, D.O., relative to his neck and low back complaints attributed to the July 21, 1998, motor vehicle accident. During her examination of the claimant, Dr. Barrett-Tuck recorded paraspinous spasm and trapezius spasm. The November 3, 1998, report of Dr. Barrett-Tuck concluded, with respect to the claimant:

Mr. Bird feels that he is responding to conservative treatment and at this time is not interested in considering surgery. I think it would be fine for him to continue treatments with Dr. Ziegler. I have also asked for him to see the physical therapy dept at HealthSouth for a back rehab exercise program. I have also given him a prescription for Naprosyn. He has Soma and will use it as needed. I expect that Mr. Bird may be able to plan to return to work in another 3-4 weeks. I am hoping that he will continue to respond to conservative treatment. If on the other hand if he does not respond and if surgery becomes a consideration for him, we would need to proceed with myelogram and post-myelogram CT scan of the cervical and lumbar areas. I would be pleased to accept a re-referral if at any point in the future Mr. Bird would wish to consider surgical intervention. (JX. #1, p. 16).

The medical reflects that claimant was again seen by Dr. Braden on August 26, 1999, for complaints relative to his neck and low back. After noting that he had last seen the claimant on October 20, 1998, Dr. Braden relayed a history of the claimant's injury, to include a known cervical disc herniation in the neck with intermittent numbness and tingling into the right arm as well as right low back pain with a normal MRI scan. The August 26, 1999, office note of Dr. Braden reflects, in pertinent part:

His symptoms had become worse. He returned to work approximately 4 to 6 months ago driving a truck and now his back pain symptomatology has increased and his neck pain and tingling in the arm has increased as

well. He is rather frightened of having any surgical intervention and wants anything done conservatively that can be don short of surgery. (JX. #1, p. 24).

The medical reflects that claimant received pain management treatment under the care of Dr. Mark Hackbarth, commencing December 23, 1999, for myofacial pain, cervical and lumbar facet joint irritation, and cervical disc herniation. (JX. #1, p. 26-28).

The medical in the record reflects that claimant was seen by his family doctor, Dr. Sanders McKee, for neck and back pain on March 19, 2001. Following the afore, an appointment was scheduled for the claimant to be seen at Semms-Murphey clinic. Claimant was seen on April 9, 2001, by Dr. Michael H. Deshazo, a Memphis neurologist, pursuant to his complaint of neck and low back pain. Following his examination of the claimant, Dr. Deshazo's impression of the claimant's complaint was that of cervical and lumbar myofascial strain. Further, Dr. Deshazo noted that he could not find any evidence of disc herniation in his evaluation of the claimant. Claimant was provided Amitriptyline, 10 mg tid, for pain symptoms by Dr. Deshazo during the April 9, 2001, evaluation. A May 10, 2001, handwritten entry on Dr. Deshazo's report reflects an increase in the dosage of claimant's Amitriptyline to 25 mg. (JX. #1, p. 31-32). The medical in the record reflects that claimant continued to receive prescriptions for either Fioricet and/or Amitriptyline through September 27, 2001. (JX. #1, p. 33). The basis for the prescription of the afore medication subsequent to September 27, 2001, is unclear from the medical records in the file, in that the same reflect complaints of sore throat, and other illnesses.

The medical reflects that claimant was seen by Dr. McKee on July 28, 2003, which was following the May 7, 2003, accident. Prior to the afore, the last entry in the records of Dr.

McKee regarding the claimant was December 30, 2002. (JX. #1, p. 35). The record reflects a Dispatch Report of May 7, 2003, regarding the claimant's fall of a tank, in accordance with the report of the claimant's accident. (JX. #1, p. 36).

The ambulance report reflects that claimant fell a distance of 8-10 feet. In addition to noting that the claimant fell on a 55 gal. drum, the report also reflects that the cervical spine was held with a cervical collar, that claimant complained of left back pain. The report details claimant's visible injuries, to include swelling in the right wrist and several lacerations, as well as his other complaints. (JX. #1, p. 37). The emergency room report reflects that x-rays were obtained of the claimant's cervical spine and lumbar spine, as well as his shoulder. Further, the diagnosis, as reflected on the emergency room report, include fracture of the right wrist, neck and lumbar sprains. sprain of the right shoulder and chest contusion. (JX. #1, p. 39-40). Claimant was directed to follow up with an orthopedic physician following his discharge from the emergency room of Tri-Lakes Medical Center on May 7, 2003.

On May 8, 2003, claimant was seen by Dr. Brian G. Dickson, a Jonesboro orthopedic physician, relative to complaints growing out of the May 7, 2003, accident. Dr. Dickson's report reflects that the claimant was referred for further medical care relative to his injuries growing out of the May 7, 2003, accident. The claimant's right wrist fracture had been diagnosed by the attending Batesville, Mississippi emergency room physician. Dr. Dickson's assessment of the claimant's complaint were; right distal radius fracture, right knee sprain, and right scapular contusion. During a May 12, 2003, visit, Dr. Dickson noted "a little bit of swelling remaining and some tenderness in his left wrist today". Dr. Dickson assessed the claimant's left wrist complaint as a sprain. During a May 19, 2003, visit, Dr. Dickson noted that the claimant wanted

to go back to work, and was released to one-handed duty. (JX. #1, p. 44).

A review of Dr. Dickson's records reflects that his medical treatment to claimant was geared toward claimant fractured right wrist and the complaint of left wrist pain. During a June 16, 2003, visit, Dr. Dickson recorded claimant's complaint with respect to his low back pain. (JX. #1, p. 45). On July 2, 2003, claimant underwent a MRI scan of his lumbar spine, which was within normal limits, pursuant to the directions of Dr. Dickson, (JX. #1, p. 48).

On July 24, 2003, claimant underwent therapy evaluation at St. Bernards Regional Medical Center Outpatient Rehab Services. The report reflects "mild decreased lumbar lordosis" relative to the claimant's lumbar spine. (JX. #1, p. 49-54). Claimant was seen by Dr. McKee on October 13, 2003, with complaints of neck and back problems, which Dr. McKee appear to relate to the 1998 automobile accident. (JX. #1, p. 57).

On October 14, 2003, claimant underwent a MRI scan of his cervical spine at St. Barnards Medical Center pursuant to the directions of Dr. McKee. (JX. #1, p. 59-60). On October 16, 2003, Dr. McKee authored a restricted release relative to the claimant with no driving until cleared by a neurosurgeon due to a herniated disc in his cervical spine. (JX. #1, p. 58; p. 62). The record reflects that Dr. McKee scheduled an appointment for the claimant with Dr. Kevin Foley, relative to the claimant's cervical spine complaint. (JX. #1, p. 64).

Respondents refused to authorize medical treatment relative to the claimant low back and neck complaints. As a consequence of the afore, claimant was not seen by Dr. Foley.

The record does reflect that claimant was referred by Dr. Dickson to Dr. William L. Bourland, a Memphis orthopedic surgeon, relative to his right wrist injury. Claimant was directed to remain off work by Dr. Dickson commencing October 20, 2003, and to continue until

after his wrist surgery. The off-work slip of Dr. Dickson coincided with that of Dr. McKee with respect to the October 20, 2003, date. (JX. #1, p. 62). On December 16, 2003, claimant underwent surgery relative to his right wrist under the care of Dr. Bourland. Claimant was released by Dr. Bourland to return to full duty on March 15, 2004. (JX. #1, p. 65-70).

Claimant asserts that he is entitled to medical and indemnity benefits relative to his neck and low back as a result of the May 7, 2003, compensable injury. Respondents deny that the claimant suffered injuries to his low back and neck in the May 7, 2003, accident. After a thorough consideration of all of the evidence in this record, to include the testimony of the witness, review of the medical reports and other documentary evidence, and application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On May 7, 2003, the relationship of employee-employer-carrier existed among the parties.
3. On May 7, 2003, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$440.00/\$330.00, for temporary total/permanent partial disability.
4. On May 7, 2003, the claimant did not sustain injuries to his lumbar and cervical spine within the course and scope of his employment.

CONCLUSIONS

It is undisputed that the claimant suffered a fall within the course and scope of his employment with respondents on May 7, 2003, which resulted in medical treatment relative to his right wrist, shoulder, left wrist, and knee, as well as his neck and low back. Respondents paid

initial medical treatment relative to the claimant's accident, to include diagnostic studies/x-rays regarding the claimant's lumbar and cervical spine. Claimant asserts that as a result of the May 7, 2003, accident, he suffered injuries to his cervical and lumbar spine, in addition to his wrists, shoulder and knee, and that respondents are liable for the cost of medical treatment relative to same to include a neurosurgeon evaluation and indemnity benefits. Respondents deny that claimant suffered a compensable injury relative to either his cervical or lumbar spine in the May 7, 2003, accident, within the preview of the Arkansas Workers' Compensation Act.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision. In order to prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence; an injury arising out of and in the course of employment, that the injury caused internal or external harm to the body which required medical services or resulted in disability or death, medical evidence supported by objective findings, as defined by Ark. Code Ann. § 11-9-102 (16), establishing the injury, and that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102 (4) (A) (i). Should the claimant fail to establish by a preponderance either of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 125, 938 S.W.2d 876 (1997).

In the instant claim, the claimant has failed to sustain his burden of proof by a preponderance of the credible evidence that he suffered an injury to his lumbar and cervical spine arising out of and in the course of his employment with respondents on May 7, 2003. At the

outset, the occurrence of the May 7, 2003, accident is not disputed. The evidence in the record reflects that as a result of a prior motor vehicle accident of July 21, 1998, claimant has received continuous medical treatment relative to his cervical spine under the care of his family physical, Dr. Sanders McKee. Further, the medical reflects that claimant underwent a cervical MRI scan relative to the July 21, 1998, injury, which disclosed objective finding. Subsequent to the May 7, 2003, accident, claimant underwent another cervical MRI scan on October 14, 2003, which did not disclose appreciable differences, with respect to objective findings, from the earlier July 23, 1998, studies.

The emergency room records of Tri-Lakes Medical Center do reflect that x-rays of the claimant's lumbar and cervical spine were obtained during the May 7, 2003, visit following the accident, however, there are no objective findings relative to lumbar and cervical spine reflected in the reports. At the time the claimant was seen by Dr. McKee, his family physician, following the May 7, 2003, accident on October 13, 2003, Dr. McKee attributed the back and neck complaints of the claimant to the 1998 accident. The claimant has failed to sustain his burden of proof by a preponderance of the evidence that he suffered a compensable injury to his cervical and lumbar spine arising out of and in the course of his employment on May 7, 2003. This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

Andrew L. Blood, Administrative Law Judge