

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F610581

PHILLIP E. JONES, EMPLOYEE	CLAIMANT
RONNIE DOWDY, INC EMPLOYER	RESPONDENT
LINCOLN GENERAL INSURANCE, CARRIER CROCKETT ADJUSTMENT, TPA	RESPONDENT

OPINION FILED AUGUST 30, 2007

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, on August 1, 2007, in Batesville, Independence County, Arkansas.

The claimant appeared pro se.

The respondent was represented by THE HONORABLE BILL H. WALMSLEY, Attorney at Law, Batesville, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on August 1, 2007, in Batesville, Arkansas. A Prehearing Order was entered in this case on April 30, 2007. This Prehearing Order set out the stipulations offered by the parties, and outlined the issues to be litigated and resolved at the hearing. This Order also set out the contentions of the respective parties.

Stipulations

By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed at

all relevant times, including September 4 and September 9, 2005.

3. The parties will stipulate to claimant's average weekly wage for both temporary total disability benefits and permanent partial disability benefits. (At the time of the hearing, the parties agreed that the claimant earned sufficient wages so as to entitle him to the maximum compensation rates for 2005-\$466.00 for temporary total disability, and \$350.00 for permanent partial disability).

4. The claim has been controverted in its entirety.

ISSUES

By agreement of the parties, the issues to be presented at the hearing were as follows:

1. Whether claimant sustained a compensable neck and back injury on September 4, 2005, and bilateral knee injuries on September 9, 2005.

2. Whether claimant is entitled to medical treatment.

3. Whether claimant is entitled to temporary total disability compensation from September 16 or 17, 2005 to a date yet to be determined.

4. Whether claimant provided notice of an injury prior to September 19, 2006.

5. If the claim is found to be compensable, whether the respondents are entitled to a setoff under Ark. Code Ann. §11-9-411. (At the time of the hearing, the respondent withdrew this as

an issue).

CONTENTIONS

The claimant contends that he sustained a neck and back injury on September 4, 2005, and bilateral knee injuries on September 9, 2005. He further contends that he is entitled to medical benefits and temporary total disability benefits from September 16 or 17, 2005, or so to a date to be determined.

The respondent contends that claimant did not sustain a compensable injury on or about September 4 or 9, 2005. There is no medical evidence, supported by objective findings that the claimant sustained a compensable injury on or about September 9, 2005. Respondent did not receive any notice of an injury until receipt of the claimant's AR-C Form and, therefore, if found compensable, the claimant is not entitled to any benefits.

The documentary evidence submitted in this case consists of the Commission's Prehearing Order of April 30, 2007, which was marked as Commission's Exhibit No. 1, and the claimant's Response to the Prehearing Questionnaire was marked as Commission's Exhibit No. 2. The respondent's Response to the Prehearing Questionnaire was marked as Commission's Exhibit No. 3. The medical records submitted by the claimant were marked as Claimant's Exhibit No. 1. The respondent's medical packet was marked as Respondent's Exhibit No. 1. The respondent's truck maintenance records were marked as Respondent's Exhibit No. 2. The claimant's wage records were

marked as Respondent's Exhibit No. 3. The decision of the Arizona Appeals Tribunal was marked as Respondent's Exhibit No. 4. The decision of the Board of Review was marked as Respondent's Exhibit No. 5. The claimant's deposition was marked as Respondent's Exhibit No. 6. The claimant's AR-C Form was marked as Respondent's Exhibit No. 7.

The following witnesses testified at the hearing: the claimant, Tammy Rhew, and Bill Milligan.

DISCUSSION

The claimant, age 49 (11/27/57), has a high school education, and previously held a commercial driver's license. He had worked for the respondent approximately four months as a long haul truck driver. At the time of the prehearing conference, the claimant maintained that he sustained compensable injuries to his neck and back while working for the respondent on September 4, 2005 due to problems with the steering system in his truck. He also alleges to have sustained injuries to his knees as a compensable consequence of his alleged specific incident injury of September 4, 2005.

The evidence demonstrates that the claimant voluntarily quit his job as a truck driver with the respondent on or about September 20, 2005, in part due to implementation of new federal rules pertaining to long haul truck drivers.

The claimant gave the following testimony concerning his alleged injury of September 4, 2005:

Q. And I believe you are alleging that you had a work-

related incident, was it September 4th or which date?

A. September from what I can remember. Even my log book shows that September 4th is the day I was driving through there.

Q. Tell me about the September 4th incident. What happened?

A. I was coming out of Birmingham and the road is always rough so I wasn't going very fast and all of a sudden it said, bump, and normally they put the sign again, you know, so you can even slow down further. This time there wasn't a sign ahead. It just said, bump, and I hit that road and it yanked on my arm and the seat went up and down. I just about lost it just out of Birmingham there. And it hurt my, my arm quit working on me. And I drove on to Atlanta and then I called Bill Mulligan the next morning.

Q. Who did you call?

A. Bill. My dispatcher.

Q. And what's Bill's last name?

A. Mulligan (Corrected by respondent's counsel as being Milligan).

The claimant further testified that at that time, he reported to Mr. Milligan that he had hurt his arm and that he needed for him to get him back home, but he failed to do so and he had to take the load on to Pennsylvania. According to the claimant, when returning from Pennsylvania, he kept falling down and injured the rest of himself.

The claimant essentially testified that upon hitting the bump, the steering wheel yanked to the left really hard, and his left arm immediately started to hurt. According to the claimant, during his trip from Pennsylvania, Mr. Milligan switched him back down to Atlanta so he could get back home to see a doctor.

The claimant gave the following testimony concerning his alleged injuries to his knees:

Q. Now, you also allege that you injured your knees. When did this incident take place?

A. Well, getting in and out of the truck, trying to get in and out of the truck only using one arm I'd slip and my knees would hit the ground and I'd fall down the rest of the way.

Q. So, is there a specific incident?

A. No, not really. It just kept happening over and over again, you know.

Q. So, you're saying - you gave us a date of September 9th - -

A. Ninth, yeah. That's when it really started in. That's when my arm really went out all the way.

Q. Are you saying then because of the problems with the September 4th incident you had problems with your knees?

A. Yes, because I couldn't climb in and out of the truck. It takes two hands. And a lot of your fuel lines and stuff if you ain't extremely careful as it is, they have spilled fuel there and you will slip and bust your butt anyway, you know.

Q. So you're just saying as a result of the problems then with your first incident you were having problems with your knees. But do you recall any specific incident?

A. No.

The claimant could not recall if he told Mr. Milligan his problems were due to having hit a bump in the road, but he did recall mentioning problems with the steering because he knew the steering was extremely hard for his truck that week.

According to the claimant, he arrived home on a Saturday, and it took him a day or two to get in to see a VA doctor, who

advised he had tendinitis with degenerative arthritis. The claimant testified he went back to the VA a week later, and the doctor released him back to work, but he was still in a lot of pain, for which he had been given medication. According to the claimant, he went ahead that day and quit his job because in his opinion, he was not legally permitted to drive a truck while using a narcotic. He also testified he believes he told the respondent he was quitting due to medical reasons. The claimant testified he has not returned to work since.

The claimant maintains he told the doctor he had injured his back and what was going on, but he told him he had tendinitis. Upon being questioned what injuries he sustained as a result of the September 4th incident, the claimant testified, "I know it was my neck because I've never had any problems with my neck. And my lower back I know probably 50% to 60% of my lower back I know for sure. I can't say absolutely 100% sure." He went on to testify he was uncertain about his back due to what the VA had done to him (telling him he had tendinitis). As to his knees, the claimant admitted the MRI did not reveal any problems with his knees. The claimant testified that after the bump in the road, only his neck and arm started to hurt.

In addition to being seen at the VA, the claimant admitted to having been seen at St. Bernard's hospital in Pocahontas. The claimant essentially testified that the only treatment recommended for his back has been stretching exercises, but that surgery has been recommended for his neck by a neurologist and

they still have not found out what's wrong with his knees.

As to current symptoms due to his alleged injury, the claimant testified he has real bad back and neck aches all the time, and if he tries to move too fast, when he turns his head back and forth, it sounds like "Rice Crispies." He also maintains he has lower back and neck pain when attempting to do dishes.

The claimant admitted to previously being treated for lower back pain at the VA due to degenerative arthritis. However, the claimant denied any major prior problems with his neck, only occasional neck stiffness, as a result of having slept wrong in his truck.

The claimant admitted to having completed the AR-C Form on September 19 (2006), and to having stated that his injury occurred due to the steering in his truck. However, he also testified that the incident of him hitting the bump in the road was also part of his problem.

The claimant gave the following explanation for the conflicting reports as to how his injury resulted:

Q. So now you're saying that your injury occurred due to you hitting a bump in the road?

A. The steering is extremely hard to turn. When you hit a bump in the road, you've got this big truck, you've got big tires. It's going to really yank your arm.

Q. But you don't mention yanking in here. You said pulling on the steering wheel caused my arm to quit working. Is that what you said here?

A. Yeah, that's what I said. I mean, I'm not, it's

not perfect, you know. I mean I'm really having a hard time with a lot of stuff because they've had me on this stupid medication and I cannot get off of it. And it is interfering with my short term memory. It interferes with my - - it gets me extremely angry sometimes. So, I have to back off from it. Even me and my wife split up because I was getting extremely too angry.

The claimant admitted to having strained his back 20 years ago while lifting rolls of plastic.

On cross examination, the claimant testified that on September 19, 2006, when he talked to Mr. Milligan, he reported having hurt his right arm and that this was the first time he had complained to him about right arm pain. The claimant denied having previously requested for Mr. Milligan to get him back home so he could see VA doctors because the arthritis in his arm was bothering him, only his back.

The claimant admitted to having testified that he was in Birmingham when he hit the bump in the road, and from there he went to Atlanta. However, the claimant did not recall having left Batesville on September 3rd and to going to Miami, Florida and having unloaded there on September 5, 2005, and then being dispatched to Deland, Florida to pick up a load.

The claimant testified he listed the date of September 9, as having injured his knees because he could not figure out what day he kept falling down. According to the claimant, he gave this as a date during the prehearing telephone conference because he believed we wanted a date.

The claimant could not recall if he complained to Mr.

Milligan about the power steering in his truck before September 4, 2005. The claimant admitted to having testified during his deposition he quit working for the respondent because the new regulations hindered his schedule, so as to keep from making as much. The claimant testified he requested that Ms. (Tammy) Rhew intercede on his behalf to get him an exception from the D.O.T. prior to his injury. The claimant admitted to not returning to work for the respondent after the September 4, 2005 incident. The claimant essentially admitted to applying for unemployment benefits with the state of Arizona after having allegedly hurt himself and after quitting his job with the respondent. He could not recall if he told the Arkansas employment personnel he had injured himself on the job. The claimant explained that he did not mention a work-related injury to the Arkansas employment personnel because he was going by what he had been told by the VA (He had arthritis rather than an injury).

The claimant specifically testified:

A. I was going by what I was told by the VA. The VA said it wasn't that kind of injury. It was arthritis.

Q. So you assumed when you had your hearing before the Arkansas unemployment people that you hadn't had an injury, is that right?

A. Well, I was kind of dead in the water when your doctor says, no, it ain't that, it's this.

Q. But is that what your assumption was, that you hadn't had an injury at the time - -

A. No, I assumed I had an injury.

Q. Well, why didn't you tell the unemployment people in Arkansas about that injury?

A. What was the point? I mean until I proved something one way or the other there was no real point, period. I mean, - -

Q. You told them about the regulation - -

A. Huh?

Q. You told them about the D.O.T. change in regulation.

A. Yes.

Q. And you told them about your arthritis?

A. Yeah.

Q. Why didn't you tell them about your workers' comp injury?

A. Because as far as I was concerned, the VA kept stating that it was not an injury. So, I kept going by that.

The claimant admitted to having certified to the employment people in both Arizona and Arkansas he was ready, willing and able to work. However, he maintains that this was done pursuant to what he had been told by the doctors at the VA.

The claimant admitted to drawing unemployment benefits for 13 weeks at a weekly rate of \$240.00 from Arizona based on his previous employment with an Arizona employer. After which, in April of 2006, he applied for unemployment benefits in Arkansas.

Upon being refreshed of his deposition testimony, the claimant admitted to getting a release stating he could go back to work effective September 19, 2005. At which time, he admitted to having approached Ms. Rhew about accommodations. He also admitted to having talked to Mr. Milligan about accommodations.

The claimant admitted to filing a workers' compensation

claim as a result of a low back injury in 1985 or '86, for which he drew benefits and received a final settlement of \$1,500.00. The claimant admitted to having spent two weeks in the hospital as a result of this injury. The claimant testified:

Q. And did you tell me that that low back injury is in the same place where your back is hurting now?

A. Part of it.

Q. Well, in your deposition you told me it was in the same place, around the belt line.

A. Some of it is. It's exactly the same place.

Q. And you've had problems with that ever since 1985, according to what you told me, isn't that right?

A. Yes, but I had MRI's and all that showed up was - -

Q. If I'm following you, anytime you asked Bill Milligan to try to get you back home it was because of, not because of arm pain but rather because of low back pain.

A. I didn't call that often when I was working for them.

Q. Were there two or three occasions when you called and said, hey, can you get me in a little early, my low back is bothering me?

A. No. Because I had been working with it for 20 years, so I knew what I had to do to maintain a good level of control without medication, except for arthritis medicine.

The claimant admitted that in his AR-C Form filed with the Commission, he does not mention a neck or back injury or about him having injured his knees, as only his arm is mentioned. He admitted that the maintenance records he received on his truck did not mention any problems with the power steering in his truck.

The claimant admitted to being asked by a doctor (at the VA) if he wanted money, but he told her he wanted "it fixed." The claimant testified:

Q. She told you she'd done all that she could do for you, didn't she?

A. Yeah.

Q. And then she told you to get out, according to what you told me in your deposition there, didn't she? Isn't that what you told me?

A. Well, I may have said it but I probably meant that I said, I got out after that.

Q. Look at your testimony there. Isn't what it said on your sworn testimony - -

A. There again - -

Q. - - that the doctor told you to get out - -

A. Well, let me give you one of my pills and let's see how you fare.

Q. My question is, is that what you told me under oath on May the 17th? That the doctor told you to get out?

A. Well, she's got it wrote down there, you know, but I'm not sure.

Q. I'm talking about what you said.

A. I'm talking about what I said.

Q. Can - -

A. And I keep telling you I can't remember half of what goes on anymore, because - -

Q. Does it not show on that - -

A. - - of that stupid medicine and I'm tired of it.

Q. Does it not show in that deposition that you told me that the doctor told you - -

A. It may show it but I did not mean to say it that

way. I got out of that lady's office because I was extremely pissed off. Because when you hurt as bad as I do and you walked up there and you ask your doctor to help you and she says, I can't do nothing else, and you've been hurting for well over a year, it just pisses you off.

Upon being questioned about his prior testimony, the claimant could not recall if he had testified on direct examination that when he hit the bump in the road outside of Birmingham both his arm and neck started to hurt. However, the claimant specifically testified he had no idea if his right arm and neck began to hurt when he hit the bump in Birmingham. The claimant admitted that during his deposition testimony, he indicated that down the center of his neck started to hurt after hitting the bump.

Upon being questioned by the Commission, the claimant maintains he told Ms. Rhew his pain was due to degenerative arthritis after being told this by his doctors. The claimant testified that on the day of the incident, he knew that the bump in the road had caused his problems. However, at this point, he stated he did not relate this to Ms. Rhew because of the Bufferin's he had been taking. The claimant testified he related this to the doctor, but he was told he had tendinitis.

On re-cross examination, the claimant admitted in his deposition testimony, he testified that after the doctor released him to return to work (on September 19th 2005), he did not have any more treatment for his neck, right shoulder and right arm until March or April of 2006. According to the claimant, this

was due to his care being transferred to Jonesboro. The claimant later denied this and testified he received treatment before March or April of 2006.

Ms. Tammy Rhew, a claims manager, for the respondent gave testimony during the hearing. According to Ms. Rhew, after reviewing the maintenance records for the claimant's truck, she was unable to find any record of any power steering problems for the period of time he worked for the respondent. She testified she was not aware the claimant was making a workers' comp claim until sometime in September of 2006, when he filed the AR-C Form. Ms. Rhew denies that the claimant ever told her he wanted to make a claim for workers' compensation benefits. According to Ms. Rhew, the claimant told her he was quitting because he could not comply with the new D.O.T. regulations, but he never related his quitting to an on-the-job injury. She admitted the claimant asked her to intercede on his behalf to get an exception from the D.O.T. regulations so that he would be allowed to work different hours than those allowed by the regulations.

Ms. Rhew testified:

Q. According to the records at Ronnie Dowdy regarding movement of the tractors that Mr. Jones was operating on September the 3rd through September the 10th, 2005, tell us what routes and what places he went to and what dates that he was dispatched from those places.

A. Okay. On September 3rd he was dispatched from Batesville, Arkansas - -

A. He was dispatched from Batesville, Arkansas and he went to Miami, Florida and delivered in Miami. And

then on September the 6th, or the 5th, I'm sorry, he picked up at Deland, Florida and delivered to Montgomery, Alabama. And then from there he was dispatched to McDonough, Georgia on the 6th to deliver to Manchester, Pennsylvania. Then when he delivered to Manchester on the 8th of September he picked up at Palmyra, Pennsylvania. He went to Virginia and switched loads with another driver and delivered that load to Doraville, Georgia on the 8th. Then he came on in to Batesville and arrived probably on the 11th, around the 11th of September to Batesville.

Q. What would have been the first day that he got to or around Atlanta, Georgia?

A. That would have been on probably the 6th.

Q. September the 6th?

A. Yes, sir.

Q. That is taken from Global positioning information what's kept on every truck operated by Ronnie Dowdy, Inc.?

A. Yes, sir.

She admitted that company records do not reflect that the claimant went to Atlanta, Georgia and unloaded on September 4. Rather, she testified he was en route to Miami, Florida. After this, Ms. Rhew testified he picked up another load in Florida at Deland, and then took that to Montgomery, Alabama. She testified that records do not show the claimant going through Birmingham in any way between Montgomery, Alabama and when he went to McDonough, Georgia.

Ms. Rhew admitting to conducting orientation with the claimant in May of 2005, at which time he was told to contact her if he was ever injured on the job. She testified she was present during the telephone conference with the claimant for his

Arkansas unemployment claim against the respondent. She testified the claimant reported he quit working for the respondent because of the change in the D.O.T. regulations which resulted in him not being able to make a lot of money. According to Ms. Rhew, during this conference the claimant never reported he had sustained a work-related injury while working for the respondent in September of 2005. She admitted the claimant told her, his problems were due to arthritis.

Bill Milligan, a dispatcher, for the respondent also gave testimony during the hearing. According to Mr. Milligan, he has worked for the respondent as a dispatcher for 12 years. He admitted to being the claimant's dispatcher on the date of the alleged incident.

Mr. Milligan gave the following testimony concerning the claimant's prior requests to be returned home due to problems relating to arthritis in his arms:

Q. Did you hear him testify that before September the 4th he had never called you complaining of arthritis problems in his arm?

A. Yes.

Q. Is that true or false?

A. That's false.

Q. Tell me about it.

A. He called me and complained about the power steering on that truck, that it was hurting his shoulder and arm. And I got him in because of that and we looked at the truck and worked on the truck. I mean, we didn't work on it. I mean they didn't find nothing wrong with it but Mr. Jones had did that.

Q. And that was before September of 2005?

A. Yes.

Q. And were there other occasions that he complained to you about the arthritis and his arm problem?

A. Yes. Yes, he had.

Q. And this was all before September of 2005?

A. Yes.

Mr. Milligan corroborated Ms. Rhew concerning the claimant's dispatch of September 3, 2005. He did admit that when the claimant got to Montgomery, Alabama he reported problems with his arm because he hit a rough road and that his arm and shoulder had started to hurt. According to Mr. Milligan, this would have sometime around September 6. He further admitted that the claimant asked him to get him home so he could go to the doctor. Mr. Milligan did not recall that the claimant ever mentioned having hurt his back, neck or knees. He admitted to asking the claimant to take another load, and he agreed to do so if he could move slowly with it. According to Mr. Milligan, the claimant was dispatched to Manchester, Pennsylvania, and returned back to Batesville on September 10, 2005. He essentially testified he had no idea the claimant's problem had anything to do with any work problem, but rather thought it was like other occasions wherein the claimant had called about problems with his arthritis and needed to get in to see a VA doctor. He admitted that after the claimant got back, the claimant asked him to get him an exception from the new regulations due to his arthritis.

However, he testified that before he could check into this, the claimant called him back and said he was going to quit.

On cross examination, Mr. Milligan admitted to having told the claimant upon his arrival back that he needed to call Tammy in order to be able to come back to work. He essentially denied having said this was due to any workers' comp related issue.

The claimant's deposition was taken May 16, 2007. He gave extensive testimony concerning his educational and work history. The claimant testified he sustained a work-related injury to his back at L-5 or L-4 in '85 or '86 while working for Golf Bag. He admits to settling the claim for \$1,500.00 because the MRI revealed an old injury. According to the claimant, he remained off work about a year-and-a-half. The claimant admitted to psychological problems due to stress. He also admitted to having held various jobs and to being unemployed for various periods of time.

The claimant essentially testified he injured himself while traveling through a rough area in Birmingham. Specifically, the claimant testified:

Q. Tell me how you hurt yourself.

A. Well, there was this - when come out of Birmingham, Alabama to get on I-20, it's rough road all the time anyway. So I slowed down and got ready for it, but apparently they decided to tear up a lot of the pavement. So when I went, before I could slow down any quicker, it just started tossing and throwing around; and I yanked on the steering wheel real hard.

Q. Okay.

A. And that's when my arm started quitting on me.

Q. Which arm?

A. My right arm.

Q. And this would have happened- would it have been September 4th.

A. Yeah, early that morning probably.

The claimant testified he called Mr. Milligan and told him he had hurt his arm and needed to get home to see a doctor. According to the claimant, at this time he had also been complaining about the power steering in his truck as well.

He admitted he could not point to a single thing and say this is what caused his knee problems. The claimant admitted to being seen at the VA in Paragould for his knees. According to the claimant, he first received treatment for his right arm, right shoulder and neck two days after he got home (at the VA). The claimant admitted to subsequently being referred to the orthopedic specialty branch in Popular Bluff, Missouri for his knees. However, he admitted to being given a knee brace and shots in his knees.

The claimant admitted his review of the maintenance records for the period of time he worked for the respondent did not indicate any problems with his power steering or any other matter.

He admitted that the last medical record was from April 25, 2007, at which point he saw Dr. Wilson (a VA doctor) for his knees. The claimant denied any other treatment for his knees except an MRI and pain medication. According to the claimant, he

also received treatment for his knees from Dr. Tracey Buxton. The claimant testified he is seeing Dr. Wilson for his knees, right shoulder, neck and back.

According to the claimant the problems with his back started about four or five days after the incident due to him getting in and out of the truck and sometimes falling. The claimant maintains that VA personnel has told him he has no cartilage in his knees, but he admits the last MRI indicates that his knees are perfect.

The claimant testified he is currently taking arthritis medicine, pain medicine, muscle spasm medicine, Amitriptyline to help him sleep, and using a TENS unit. He also testified that surgery has been recommended for his neck, but he is afraid to undergo surgery.

Maintenance records on the two units operated by the claimant while working for the respondent from approximately June 1, 2005, until January 4, 2006 were also introduced into evidence. These records do not indicate any problem with the claimant's power steering during the aforementioned period of time.

The claimant completed an AR-C form on September 19, 2006, which was filed with the Commission on September 25, 2006. The claimant reported his injury as having occurred on September 7, 2006 in Georgia. The claimant gave the following description of the accident and his alleged injury, "I told the company my power staring [sic] had gone out on my truck. Pulling on the staring

[sic] wheel cased [sic] my arm to quit working...."

On April 21, 2006 Dr. Jon Frego stated in a letter the following:

Phillip Jones is currently under my care. He is on medication that is for pain and can be sedating. He should not drive or operate heavy machinery and take this drug.

An MRI was taken of the claimant's lumbar spine on March 14, 2007, with the following conclusion:

CONCLUSION:

Pronounced circumferential disc bulging. Chronic herniation of L5-S1 with compromise of the canal and both lateral recesses and foramina. It is difficult to determine which nerve root may be most involved. Similar milder changes to L4-5.
3.8 cm abdominal aortic aneurysm.

An MRI was taken of the cervical spine on April 17, 2007, with the following conclusion:

CONCLUSION:

Large central HNP at C6-7, causing severe spinal stenosis and cord compression at that level. I would recommend urgent neurosurgical opinion in view of the severity of these findings. Bony neuroforaminal stenoses on the left at C3-C4 and bilaterally at C5-C6.

The claimant underwent evaluation with Dr. Robert Abraham, a neurosurgeon, on April 20, 2007, pursuant to referral by Dr. Traci Buxton due to complaints of neck to lower back pain. Dr. Abraham reported, in pertinent part:

Mr. Phillip Jones is a 49 yr. Old white male who is here today for c/o neck to lower back pain. This pain starts in his neck and goes down to his lower back. From the neck to his right arm (worse than left arm) will have sharp pain and gradually go to numbness and tingling. His lower back pain will go down his right leg posteriorly all the way down to his foot (worse on right than left) and after walking for a while or especially on concrete verses grass the sharp pain will

go to numbness and tingling. He will also start to drag his right leg. It hurts to get out of bed or get up from a sitting position. His right hand will really increase in with sharp pain and numbness and tingling when he tries to do things such as turning a key to open a door. His pain in [sic] chronic and constant and he denies any weakness in bower or bladder.

Mr. Jones problems started while driving a truck last September of 2005. He was driving down a very rough road and his back started bothering him after that point. He has seen the VA several times and they only say its Arthritis [sic]. So he finally went to see Dr. Buxton and she ordered an MRI at St. B's Imaging ctr times 2. After the 2nd MRI she set him up an appt. to come here for further eval. of the ABN MRI.

Pursuant to this examination, Dr. Abraham assessed the claimant as having "cervical radiculopathy and lumbar radiculopathy."

An MRI was taken of the claimant's right knee on May 8, 2007, which demonstrated the following:

Multiple pulse sequence in coronal, sagittal and axial planes were obtained without contrast.

There is signal alteration in the posterior horn of the medial meniscus compatible with intrasubstance desiccation. There is no direct evidence of a meniscal tear or other specific internal derangement. There is no significant effusion. The cruciate ligaments are intact. There is no appreciable acute osseous abnormality. The petellar cartilage thickness is normal for age.

Impression:

1. No Acute process.

Adjudication

A. Notice

Ark. Code Ann. § 11-9-701(a) provides:

(1) Unless an injury either renders the employee physically or mentally unable to do so, or is made known to the employer immediately after it occurs, the employee shall report the injury to the employer on a form prescribed or

approved by the Workers' Compensation Commission and to a person or at a place specified by the employer, and the employer shall not be responsible for disability, medical, or other benefits prior to receipt of the employee's report of injury. . . .

(b) (1) Failure to give the notice shall not bar any claim:

(A) If the employer had knowledge of the injury or death;

(B) If the employee had no knowledge that the condition or disease arose out of and in the course of the employment; or

(C) If the commission excuses the failure on the grounds that for some satisfactory reason the notice could not be given. . . .

In the present matter, the claimant essentially testified that he hit a bump in the road in Birmingham on or about September 4, 2005, while performing duties as a long-haul driver for the respondent. The claimant further testified that he informed Mr. Milligan, his dispatcher, on the date of the accident that he had hit a bump in the road and needed to get home to see a doctor for his arm because it had quit working. Mr. Milligan testified essentially that the claimant told him on September 6, (2005), when he had gotten to Montgomery, Alabama, he had hit a rough area and that his arm and shoulder were hurting; therefore, he needed to get him in so that he could go see a doctor. Although the respondent contends it did not receive notice until the claimant signed a Form AR-C on September 19, 2006, based on the aforementioned evidence, pursuant to Ark. Code Ann. §11-9-701(b) (1) (A), I find that the employer had

knowledge on September 6, 2005, that the claimant had possibly sustained a work-related injury. The claimant is therefore not barred from receiving worker's compensation before the claimant signed the September 19, 2006 Form AR-C in the event his alleged injuries are found to be compensable. While I recognize the claimant testified he gave notice to Mr. Milligan on September 4th that he had injured his arm while traveling through Birmingham, I attach more weight to Mr. Milligan's testimony given the fact the claimant has admitted to having problems with his memory, since he reported the injury on the AR-C form as having occurred on September 7, 2006, and because Mr. Milligan gave a more credible account of the reporting and since his testimony of the claimant's whereabouts around this time is consistent with the respondent's Global positioning travel records for the claimant.

B. Compensability

It appears the claimant now contends that he sustained a compensable injury to his neck while working for the respondent on or about September 4, 2005. Ark. Code Ann. §11-9-102(4)(A) defines "compensable injury" as:

(i) An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, 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 the time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4) (D). "Objective findings" are those findings which cannot come under the direct control of the patient. Ark. Code Ann. § 11-9-102 (16). The claimant bears the burden of proof in establishing a compensable injury and must sustain that burden by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(E) (i).

While I recognize the claimant may have been confused about the date he hit a rough area and the town he may have been traveling through, in light of Mr. Milligan's testimony; based on the evidence as a whole, I find that the claimant sustained a specific incident "identifiable," by time and place of occurrence, although not precisely "identified." Edens v. Superior Marble & Glass, 346 Ark. 487, 58 S.W. 3d 369 (2001). Nonetheless, the claimant contends he sustained an accidental injury to his neck on September 4, 2005 due to having hit a rough area/bump in the road, while working for the respondent. The evidence as a whole does not demonstrate an accidental injury occurring to the claimant's neck in September of 2005, while working for the respondent.

I do not find the claimant to be a credible witness. As set out above, the claimant's testimony at the hearing and during his deposition is confusing and conflicting. When the claimant

reported his incident to Mr. Milligan, he testified the claimant only reported having injured his arm and shoulder. During the hearing, the claimant reported he injured his left arm. However, during his deposition testimony, the claimant testified he injured his right arm. When the claimant reported his injury on the AR-C Form, almost a year later, he made absolutely no mention of any injury to his cervical area, as he reported having injured only his arm. Although the claimant maintains he sought treatment from the VA approximately two days after he arrived home after the incident, this medical evidence was not provided, and there is no medically documented complaint by the claimant of any cervical problems until April of 2007, some 19 months after his alleged incident. It would require conjecture and speculation to causally link the claimant's cervical problems (namely, the "large central HNP at C6-C7 and abnormalities at C3-C4 bilaterally at C5-C6, found in the MRI of April of 2007) to the September 2005 incident. Conjecture and speculation cannot supply the place of proof. Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W. 2d 155 (1979).

Therefore, considering that there are no initial medicals corroborating an injury to the claimant's neck, that the claimant did not report a neck injury to Mr. Milligan, the AR-C Form does not corroborate the claimant's testimony concerning his alleged injury to his cervical, that there are no medically documented

report of problems with his cervical spine until April of 2007, I find that it is more probable than not that the claimant's current cervical problems did not arise out of and in the course of his employment with the respondent during the September 2005 incident. As a result, I find that the claimant failed to prove by a preponderance of the evidence that he sustained a compensable injury to his cervical, which arose out of and in the course of his employment with the respondent. While I recognize it is conceivable that the claimant's complaints of arm and shoulder pain, may be secondary complaints to his neck problems, however, given the fact that the claimant had previously complained of arm pain and requested for Mr. Milligan to get him home early so that he could seek treatment from the VA doctors and because the claimant gave conflicting reports of which arm he allegedly injured during the incident, I find that it would require pure speculation and conjecture to causally connect his current complaints of arm and shoulder problems to the September 2005 incident.

The claimant also alleges that as a compensable consequence of this alleged injury of September of 2005 that he sustained a back injury and bilateral injuries to his knees a few days after the incident while returning home. Had the claimant been able to meet his burden of proof of a neck injury, which I do not find, based on the evidence as a whole, he would not be able to meet

his burden of proof for compensable injuries to his back or knees due to the following reasons.

With respect to his back, the claimant admits that he has had longstanding ongoing problems with his back, for which he received treatment from the VA. The claimant even testified he was only 50% to 60% certain he injured his back during the incident, as he was not 100% certain. In addition to this, the claimant admitted that prior to the incident, he had asked Mr. Milligan to get him home early so that he could seek treatment for his back. He also admits to a prior injury in this same area, and the MRI of his lumbar spine on March 14, 2007, revealed "chronic herniation of L4-5 with compromise of the canal and both lateral recesses and foramina." In addition, when the claimant filed the AR-C Form, he made absolutely no mention of a back injury. As such, I find that the greater weight of the credible evidence would not mandate a finding that the claimant's back condition would in any way be a compensable consequence or otherwise causally related to the September 2005 incident.

Nor did the claimant prove he sustained compensable consequence injuries to his knees as a result of the alleged September 2005 work-related injury. The instant claimant made absolutely no mention of his knees on the Form AR-C. In addition to this, the claimant failed to establish a compensable injury to either knee supported by objective medical findings. The MRI of

the claimant's right knee was read as within normal limits with no evidence of a meniscal tear or other specific internal derangement or acute process. There are no reports of swelling, contusion or other objective findings establishing a compensable consequence to the claimant's left or right knee. Absent objective medical findings establishing an injury to either knee, the claimant cannot meet his burden of proving by a preponderance of the evidence that suffered a compensable consequence injury to his knees.

Since the claimant failed to prove a compensable injury, he is not entitled to any temporary total disability compensation or medical benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed at all relevant times, including September 4 and September 9, 2005.
3. The claimant earned sufficient wages so as to entitle him to the maximum compensation rates for 2005-\$466.00 for temporary total disability and \$350.00 for permanent partial disability.
4. This claim has been controverted in its entirety.
5. The claimant gave notice of a specific incident on September 6, 2005, pursuant to the provisions of Ark. Code Ann. §11-9-701.
6. The claimant failed to prove he sustained a compensable injury to his neck as a result of the September 2005 incident.

7. The claimant failed to prove by a preponderance of the credible evidence that he sustained a compensable consequence injury to his back as a result of the September 2005 incident.
8. The claimant failed to prove that he sustained compensable bilateral injuries to his knees as a compensable consequence of the September 2005 incident.

Order

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his neck in September of 2005 while working for the respondent. Therefore, this claim is hereby denied and dismissed.

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge