

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NOS. F513215 & F602788**

**STEVEN LAMB, EMPLOYEE**

**CLAIMANT**

**NORAC COMPANY, INC., EMPLOYER**

**RESPONDENT**

**TWIN CITY FIRE INSURANCE COMPANY,  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED AUGUST 1, 2007**

Hearing before Administrative Law Judge Barbara Webb on May 3, 2007, in Helena, Phillips County, Arkansas.

The claimant was represented by Mr. Mike J. Etoch, Jr., Attorney at Law, Helena, Arkansas.

The respondents were represented by Mr. Andy L. Caldwell, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on the above-styled claim on May 3, 2006, before Administrative Law Judge Barbara W. Webb. A pre-hearing conference was held in this case on October 3, 2006. A Pre-hearing Order was entered in this case on October 4, 2006, setting the case for hearing on December 19, 2006. The hearing was continued by agreement of the parties to January 25, 2007, due to on-going medical discovery. Due to unexpected developments and the need to conduct additional discovery, the case was rescheduled for another pre-hearing conference for February 20, 2007, and the hearing scheduled for January 25, 2007, was cancelled. A second pre-hearing conference was conducted on February 20, 2007. A second Pre-hearing Order was entered in this case on February 20, 2007. The February 20, 2007 Pre-hearing Order set forth the stipulations offered by the parties

and outlined the issues to be litigated and resolved at this hearing. A copy of the February 20, 2007 Pre-hearing Order is made a part of the hearing record.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee/carrier relationship existed on September 13, 2004 and on January 5, 2006, when claimant sustained compensable low back injuries.
3. The claimant's average weekly wage was \$514.00, resulting in temporary total disability rate of \$343.00 and a permanent partial disability rate of \$257.00, if the claim is found compensable.

---

**ISSUES**

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

1. Compensability of claimant's alleged injury on January 5, 2006.
2. Claimant's entitlement to additional medical benefits.
3. Claimant's entitlement to temporary total disability benefits and travel expenses.
4. Controversion and attorney's fees.
5. Claimant reserves all other issues.

---

**CONTENTIONS**

The claimant contends that he injured his back on September 13, 2004, and again on January 5, 2006, while working for respondent employer. The Commission granted the claimant a change of physician to Dr. Thomas Hart on June 27, 2006. The claimant contends he is entitled to temporary total disability benefits, medical benefits, travel expenses and attorney's fees. The claimant reserves all other issues.

The respondents contend that claimant sustained an injury to his low back on September 13, 2004, and that all appropriate benefits were paid. The respondents deny that the claimant sustained an accidental injury causing internal or external physical harm arising out of and in the course of his employment with respondent employer on January 5, 2006. Respondents initially accepted the claim as compensable and paid all appropriate benefits until the claimant was released by Dr. Sprinkle on March 14, 2006. The respondents contend that the claimant was seen by Dr. Sprinkle on March 14, 2006, at which time Dr. Sprinkle indicated the claimant was at maximum medical improvement and assigned a 0% impairment rating. The respondents controverted claimant's entitlement to additional benefits contending that they are not causally related to his compensable injury but are due to degenerative changes or other non-work related conditions. The respondents contend that additional treatment by Dr. Hart is not reasonable or necessary.

The record consists of a one volume transcript of the May 3, 2007 hearing, consisting of the testimony of Jeff Wages, Terence Sikes, Shannon Bundren, Renee Lamb, and Steven Lamb, the claimant, and all documentary evidence consisting of Commission's Exhibit 1 (Pre-hearing Order); Commission's Exhibit 2 (Amended Letter); Claimant's Exhibit 1 (Medical Reports); Respondents' Exhibit 1 (Medical Reports); Respondents' Exhibit 2 (Investigator's report); Respondents' Exhibit 3 (Video/CD from investigator); Respondents' Exhibit 4 (Medical Records from 9/14/95 to 7/14/04); Respondents' Exhibit 5 (Commercial Driver's License Fitness Determination); Respondents' Exhibit 6 (Investigator's Report & Tape, 1/06 to 2/06); Joint Exhibit 1 (Telephonic Deposition from Dr. Sprinkle, 3/02/07); Joint Exhibit 2 (Deposition from Dr. Michael Calhoun, 4/19/07); Joint Exhibit 3 (Deposition of Dr. Michael Calhoun, 1/04/05. The Claimant's post-hearing brief submitted on May 23, 2007, and Respondents' post-hearing brief submitted on May 23, 2007, have been blue-backed and are fully incorporated by reference and made a part of the record of this proceeding.

#### **FACTUAL BACKGROUND**

The claimant is fifty years of age (b.d. 03-02-57). He completed eleventh grade and subsequently received his GED. In 1995, Lamb had low back injuries while working for Cedar Chemical Company which he described as "pulled muscles". On September 1, 2003, Lamb began working at Norac Chemical Company. Prior to his employment, he was given a pre-employment physical which revealed normal findings with mild degenerative disease in his back. In September

of 2004, Lamb suffered a low back injury when his foot slipped off a pallet while lifting a fifty pound drum. His injury was accepted as compensable by Norac and he received medical treatment from Dr. Pillow and Dr. Camillo. During his treatment, he continued to work full duty but continued to have problems. He subsequently sought treatment with his family doctor, Dr. Bell. After an MRI was performed in 2005, Lamb was referred to Dr. Schlessinger. He was placed on light duty and treated conservatively with therapy and epidural shots. Due to continuing problems, he was transferred to a different part of the plant that did not require heavy lifting. After the Christmas break, he was transferred back to his original job. He returned to his original duties on January 2, 2006. On January 5, 2006, he contends that he was helping a co-worker load 78 pound drums on a pallet when he injured his neck and back. He reported the injury to his safety supervisor, Jeff Wages, that morning. He was taken to the Pillow Clinic and the claim was initially accepted as compensable. On January 9, 2006, Lamb was fired by Norac Chemical Company for other reasons. Lamb continued to seek medical treatment with Dr. Pillow and was ultimately referred to Dr. Sprinkle. He was evaluated and released by Dr. Sprinkle to return to work in March of 2006.

In June of 2006, Lamb was granted a change of physician to Dr. Thomas Hart. He was evaluated by Dr. Hart on August 4, 2006. A second MRI was performed on August 7, 2006, and Lamb was referred to Dr. Michael Calhoun to be evaluated for possible surgery. Dr. Calhoun recommended neck surgery and opined that Lamb's need for neck surgery was caused by his injury on the job on

January 5, 2006, based on his interpretation of the 2006 MRI which revealed a cervical herniation at C6-7 which he noted did not appear on the earlier 2005 MRI.

Respondents contend that the claimant was released by Dr. Sprinkle on March 14, 2006, at maximum medical improvement with a 0% permanent impairment rating. Respondents point out that at the time Lamb saw Dr. Hart in August of 2006, he was complaining of back, middle back, neck, left shoulder, left elbow, left hand pain, and numbness in his fingers. However, two days following this visit, the claimant was observed loading his truck with camping gear, such as a tent, lawn chair, and ice chest, without any visible sign of injury. He was able to walk with a normal gait, lift items above his head, bend and twist. They point out that even after the second MRI of August 7, 2006, Lamb was observed walking, carrying car ramps, using a creeper to roll underneath vehicles, changing the oil in a vehicle, driving a vehicle, getting in and out of a vehicle without difficulty, and lifting his arm above his waist, bend, twist, with no visible sign of injury. Respondents note that when Lamb returned to Dr. Hart on August 25, 2007, a physical examination revealed positive compression signs not present on the initial examination on August 4, 2006. Respondents also contend that the evidence demonstrates that Dr. Calhoun, a neurosurgeon, was initially unable to state what caused Lamb's herniation at C6-7 as revealed on the August 7, 2006 MRI within a reasonable degree of medical certainty. Calhoun released a subsequent report dated January 12, 2007. Although in his new report, Calhoun rendered an opinion that the claimant's current complaints and need for treatment were causally related

to his employment, he admitted that Lamb was not a “good historian”. They further note that Dr. Calhoun indicated that the claimant could not tell him how soon his symptoms began occurring after the alleged incident. The respondents further rely on the radiologist’s comparisons of the 2005 cervical MRI and the August 2006 MRI. The radiologist notes that both tests reveal an osteophyte complex at C6-7 and concludes that there is no change between the two tests. The respondents further point out that Dr. Sprinkle reviewed the report of Dr. Hart and Dr. Calhoun and testified that the claimant was having different complaints than those for which Lamb reported to Dr. Sprinkle in March of 2006. Dr. Sprinkle testified that Lamb did not have any signs of radiculopathy or a pinched nerve in either the cervical or lumbar spine and that the pattern of numbness in his left hand was consistent with ulnar nerve entrapment. Based on the above reasons, respondents contend that Lamb did not sustain an accidental injury on January 5, 2006, in that there were no new objective findings causally related to his employment. Alternatively, respondents contend that even if there are objective findings, it would require impermissible speculation and conjecture to determine the cause of those findings.

## **DISCUSSION**

### **Compensability and Additional Medical Treatment**

Ark. Code Ann. § 11-9-102(4)(A) defines “compensable injury”:

(a)n 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 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). Claimant’s burden of proof shall be a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4)(E)(i). If 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.

It is the exclusive function of the Commission to determine the credibility of the witnesses and the weight to be given their testimony. Johnson v. Riceland Foods, 47 Ark. App. 71, 884 S.W.2d 626 (1994). Furthermore, the Commission is not required to believe the testimony of the claimant or other witnesses, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. Morelock v. Kearney Company, 48 Ark. App. 227, 894 S.W.2d 603 (1995). It is important to note that the claimant’s testimony is never considered uncontroverted. Lambert v. Gerber Products Co., 14 Ark. App. 88, 684 S.W.2d 842 (1985); Nix v. Wilson World Hotel, 46 Ark. App. 303, 879 S.W.2d 457 (1994).

In the instant case, the evidence demonstrates that claimant had suffered from low back pain since his work-related injury in September of 2004. The medical records in this case reflect that claimant had continued to experience problems for several months. The only evidence offered by claimant to corroborate

a second on-the-job incident in January of 2006 was the testimony of his co-workers, Terrence Sikes and Shannon Bundren. However, neither of his co-workers testified that they had seen the claimant get hurt. While there was testimony that claimant had been seen lifting a drum above his head within the hour preceding his complaint of injury, the clear weight of the evidence demonstrated that the drum would have been empty and was done while the claimant was “joking” around. Claimant testified that he was injured as he helped Bundren move heavy drums after discovering that he had loaded the wrong pallet. Bundren’s testimony did not corroborate the claimant’s version of the events. Rather, Bundren testified that he was on break when claimant allegedly injured himself and that he personally moved the drums from the wrong pallet to the right kind of pallet. Moreover, at the time of the alleged injury, Lamb reported that he had re-injured his low back and did not complain of any neck problems.

Ark. Code Ann. § 11-9-508 states that employers must provide all medical treatment that is reasonably necessary for the treatment of a compensable injury. What constitutes reasonable and necessary treatment under the statute is a question of fact for the Commission. Ganksy v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996); Geo Specialty Chem., Inc. v. Clingan, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Respondents are responsible only for medical services which are causally related to the compensable injury.

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 voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i). In the present case, I find that the claimant does not establish a compensable low back or neck injury by medical evidence supported by objective findings due to a work-related incident in January of 2006.

In the instant case, it is undisputed that the initial incident involving the claimant occurred at work. The primary dispute is whether claimant has established a causal connection between a second work-related incident and the need for medical treatment. In a workers' compensation case, a claimant must prove a causal connection between the work-related accident and the disabling injury. Stephenson v. Tyson Foods, Inc., 70 Ark. App. 265, 19 S.W.3d 36 (2000). The determination of whether a causal connection exists is a question of fact for the Commission to determine. Jeter v. B.R. McGinty Mech., 62 Ark. App. 53, 968 S.W.2d 645 (1998).

Claimant relies on the testimony of Dr. Calhoun to establish objective evidence of a new injury in January of 2006. However, this is a case where the opinion of Dr. Calhoun is based solely on the subjective complaints of the claimant.

As stated in his April 19, 2007, deposition, Dr. Calhoun testified, as follows:

Q. Knowing all of that, can you say within a reasonable degree of medical certainty that this patient's current need for treatment and his MRI findings are causally connected to an employment-related incident on January 5, 2006?

A. From what I've heard and from what I've talked to him about, yes I can.

Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16)(B)(Repl. 1996). The Arkansas Court of Appeals has held:

the plethora of possible causes for work-related injuries includes many that can be established by a common-sense observation and deduction. To require medical proof of causation in every case appears out of line with the general policy of economy and efficiency contained within the workers' compensation law. To be sure, there will be circumstances where medical evidence will be necessary to establish that a particular injury resulted from a work-related incident - but not in every case. We find the Court of Appeal's reasoning in *Millican* and *Tilley* persuasive. We therefore adopt the holding in *Millican* that objective medical evidence is necessary to establish the existence and extent of an injury, but is not essential to establish the causal relationship between the injury and the work-related incident (emphasis added).

Freeman v. Con-Agra Frozen Foods, 70 Ark. App. 306, 27 S.W.3d 762 (2000), quoting Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999). See Stephens Truck Lines v. Millican, 58 Ark. App. 275, 950 S.W.2d 472 (1997) and Aeroquip, Inc. v. Tilley, 59 Ark. App. 163, 954 S.W.2d 305 (1997).

Based on this reasoning, Freeman, summed up the current state of the law as such:

Medical evidence is not ordinarily required to prove causation, i.e., a connection between the injury and the claimant's employment, but if an unnecessary medical opinion is offered on that issue, the opinion must be stated with a reasonable degree of medical certainty.

Freeman, supra, citing Wal-Mart Stores, Inc. v. Van Wagner, 337 Ark. 443, 990 S.W.2d 522 (1999).

The law is clear that medical opinions based upon "could", "may", "possibly", and "can" lack the definitiveness required by Ark. Code Ann. §11-9-

102(16)(B)(Supp.1999) which requires that medical opinions be stated within a reasonable degree of medical certainty. Scott v. Middleton Drywall, 2005 AWCC 22 (Feb. 9, 1005) (“probably did” found insufficient to prove causation); Frances v. Gaylord Container Corporation, 341 Ark. 527, 20 S.W.3d 280 (2000) (overruling prior Court of Appeals decision and holding that “could” was insufficient to satisfy standard ); Crudup v. Regal Ware, Inc. , 341 Ark. 804, 20 S.W.3d 760 (2001) (“theoretical possibility” did not meet standard of proof); Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001) (to pass muster, opinion must be more than speculation and go beyond possibilities).

The Arkansas courts have frequently discussed the distinction between a recurrence and an aggravation of a preexisting injury. When the primary injury is shown to have arisen out of and in the course of the employment, the employer is responsible for every natural consequence that flows from that injury. If, after the period of initial disability has subsided, the injury flares up without an intervening cause and creates a second disability, it is a mere recurrence, and the employer remains liable. Atkins Nursing Home v. Gray, 54 Ark. App. 125, 923 S.W.2d 897 (1996). A recurrence is not a new injury but simply another period of incapacitation resulting from the previous injury. Pinkston v. General Tire & Rubber Co., 30 Ark. App. 46, 782 S.W.2d 375 (1990). The test for determining whether a subsequent episode is a recurrence or an aggravation is whether the subsequent episode was a natural and probable result of the first injury or if it was precipitated by an

independent intervening cause. Georgia-Pacific Corp. v. Carter, 62 Ark. App. 162, 969 S.W.2d 677 (1998).

In workers' compensation law, an employer takes the employee as he finds him, and employment circumstances that aggravate pre-existing conditions are compensable. Williams v. L & W Janitorial, Inc., 85 Ark. App. 1 145 S.W.3d 383 (2004); Heritage Baptist Temple v. Robison, 82 Ark. App. 460, 120 S.W.3d 150 (2003). An aggravation of a preexisting non-compensable condition by a compensable injury is, itself, compensable. *Id.*

In the instant case, the claimant had suffered from similar symptoms for an extended period of time prior to January 5, 2006. Based on my review of the entire record, I find that claimant has failed to prove that he was injured as a result of a specific work-related incident on January 5, 2006. A claim for workers' compensation benefits must be based on proof. Speculation and conjecture, even if plausible, cannot take the place of proof. Arkansas Department of Correction v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991).

### **OBJECTIVE FINDINGS**

Respondent contends that there are no "objective findings" as required in order to support compensability of the alleged 2006 injury. The claimant bears the burden of proving a compensable injury by a preponderance of the evidence. Smith v. City of Fort Smith, 84 Ark. App. 430, 143 S.W.3d 593 (2004). In addition to proving his injury by a preponderance of the evidence, the claimant must establish the existence of the injury by medical evidence and supported by "objective

findings.” See Ark. Code Ann. § 11-9-102(4)(D). Objective findings are those that cannot come under the voluntary control of the patient. See Ark. Code Ann. § 11-9-102(16)(A)(i). The claimant must also prove that there is a causal connection between the work-related accident and the injury. Stevenson v. Tyson Foods, Inc., 70 Ark. App. 265, 19 S.W.3d 36 (2000). With respect to this proof, the claimant must show that the “major cause” of the injury is the workplace. When making this determination, the claimant does not receive the benefit of the doubt. Ark. Code Ann. § 11-9-704(c)(4)(Supp. 1995); Glencorp Polymer Products v. Landers, 36 Ark. App. 190, 820 S.W.2d 475 (1991).

In the present case, the claimant has not presented any objective medical findings supporting a change of or the existence of a compensable injury as a result of any work performed by the claimant on January 5, 2006. The claimant underwent MRIs and electrodiagnostic testing, which all resulted in negative or normal findings. The subsequent MRI and other diagnostic tests have not resulted in any objective findings of new injury other than degenerative changes. Without such proof, the claim against respondents must fail.

#### **Additional Temporary Total Disability**

Claimant is contending that he is entitled to additional temporary total disability benefits to a date yet to be determined. The claimant is entitled to temporary total benefits if he can satisfy a two-prong test: (1) claimant must be within his healing period; and (2) completely incapacitated from earning wages. Ark. Highway & Trans. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The

healing period is defined as that period for healing the injury, which continues until claimant is as far restored as the permanent nature of the injury will allow. Nix v. Wilson World Hotel, 46 Ark. App. 303, 879 S.W.2d 459 (1994). Based on Dr. Sprinkle's recommendations, the claimant was released to return to work on March 14, 2006, after completion of additional physical therapy. Moreover, the evidence demonstrates that claimant was physically able to continue to work at Norac and left work due to his termination from his employment for other reasons. Based on the preponderance of the evidence, I find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability benefits.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. That the Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. That the employee/employer/carrier relationship existed at all relevant times, including January 5, 2006.
3. Claimant has failed to establish by a preponderance of the evidence that he suffered a compensable neck injury on January 5, 2006, during the course and scope of her employment.
4. Respondent has fully controverted the payment of all additional benefits.

**ORDER**

For the reasons discussed herein, this claim must be, and hereby is, respectfully denied.

**IT IS SO ORDERED.**

---

**HONORABLE BARBARA WEBB**  
**Administrative Law Judge**