

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F702028**

**JAMES D. RUNYON, EMPLOYEE**

**CLAIMANT**

**BENNIE LADD FARMS, EMPLOYER**

**RESPONDENT NO. 1**

**UNION INSURANCE COMPANY., CARRIER**

**RESPONDENT NO. 1**

**SECOND INJURY FUND**

**RESPONDENT NO. 2**

**OPINION FILED JANUARY 15, 2008**

Hearing before Administrative Law Judge O. Milton Fine II on October 23, 2007, in Searcy, White County, Arkansas.

Claimant represented by Mr. James McLarty III, Attorney at Law, Newport, Arkansas.

Respondents No. 1 represented by Mr. William C. Frye, Attorney at Law, North Little Rock, Arkansas.

Respondent No. 2, represented by Ms. Judy Rudd, Attorney at Law, Little Rock, Arkansas, did not appear.

**STATEMENT OF THE CASE**

On October 23, 2007, the above-captioned claim was heard in Searcy, Arkansas. A prehearing conference took place on September 10, 2007. A prehearing order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

**Stipulations**

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit

1. With the addition of another stipulation, they are as follows, which I accept:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/employer/carrier relationship existed at all relevant times, including August and September of 2006.
3. Farm Bureau Insurance, who has a policy on Respondent Bennie Ladd Farms, paid the first \$5,000.00 of Claimant's medical treatment.

### Issues

At the hearing, Claimant asked that the record reflect that he was reserving all issues except for the following:

1. Whether Claimant sustained a compensable injury.
2. Whether Claimant is entitled to reasonable and necessary medical treatment.

### Contentions

#### Claimant:

1. Claimant contends that he suffered a compensable injury on September 18, 2006 and that he is within his period of healing and requires additional medical care and treatment.

#### Respondents No. 1:

1. Respondents contend that the Claimant's problems are longstanding in nature, dating back to 1994. He had an MRI in 1994 that was normal. In May of 1996, the Claimant had MRIs of both the hip and back that showed degenerative changes. The Claimant was also followed over the years by Dr. Kent, who is his family doctor. In 2005, the Claimant gave a history that

he had been having problems for the last ten years, with radiating pain down both legs. He required steroid injections and underwent a myelogram. Dr. Cathey saw the Claimant and felt that he had degenerative disc disease and osteoarthritis. He stated that the Claimant would continue to need injections, physical therapy, and chiropractic treatment over the years. The Claimant contends that he fell off of a trailer on August 17, 2006. The Claimant went back to Dr. Cathey, and also treated with Dr. Daniel Moore. Dr. Cathey noted that the Claimant's neurological exam was normal, there was no spasm and no restricted range of motion. The Claimant primarily had degenerative disc disease. Because of his longstanding problems, the Claimant was sent to Dr. Annette Meador for smoking [sic]. Dr. Meador wrote to Dr. Cathey that the MRI was essentially negative and that the Claimant had tenderness and normal strength. At this point, Respondents contend that the Claimant does not have any objective findings and, in the alternative, that his problems are preexisting and not due to an accident on August 17, 2006.

Respondent No. 2:

1. The Second Injury Fund will state its contentions upon completion of discovery and ripening of the permanency issue.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, I hereby make the following

findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2002):

1. The Arkansas Workers' Compensation Commission has jurisdiction over these claims.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. The testimony by Bennie Ladd regarding a statement made by insurance agent Bobby Bowen will be admitted into evidence.
4. Claimant has not proven by a preponderance of the evidence that he sustained a compensable injury because it was not established by medical evidence supported by objective findings.
5. The reasonable and necessary medical care issue is moot in light of the above finding.

### **PRELIMINARY RULINGS**

#### **Admission of Testimony of Bennie Ladd Regarding Statements Made by Bobby**

#### **Bowen:**

During his questioning of witness Bennie Ladd, Claimant asked him about statements Bobby Bowen, his insurance agent, had made. The following colloquy occurred:

MR. FRYE: Your Honor, this—Mr. Bowen is not my agent. He is an agent with the claimant on his policies and he is not with Union Standard. He is not a representative of the insurance company and he's not here today. This is hearsay . . . [a]nd any declaration against a party in interest is an exception to hearsay and he is not a party, nor is he a party of interest in this case.

MR. McLARTY: Judge, I think he certainly is their agent. He is the agent who sold the policy. He is the agent who received the notice of this man on

this comp claim. He is the agent who, ultimately, turned the claim in to the carrier.

I took the matter under advisement at the hearing and permitted Claimant to proffer the following testimony:

Q. Now, when you told Mr. Bowen you expected him to get your man's medical treatment covered, he then told you what about turning it in to comp?

A. That we had a comp policy that we could turn it in on.

However, prior to the objection, the following exchange had already occurred between Claimant's counsel and the witness, without objection:

Q. When you told Mr. Bowen you wanted [Claimant] to get the medical that he needed or you were going to sue him, what did Bowen tell you he would do?

A. He said well we have this workman's [sic] comp policy that we can file it under.

Moreover, on cross-examination, the following exchange occurred between Ladd and counsel for Respondents No. 1:

Q. And then, at that point, you told [Bowen] you'd better find some way to get this man's medical paid?

A. Yes.

Q. And then Mr. Bowen came back and said, hey, we have this workers' compensation policy?

A. Yes.

Arkansas Code Annotated § 11-9-705(a)(1) (Repl. 2002) provides:

In making an investigation or inquiry or conducting a hearing, the Workers' Compensation Commission shall not be bound by technical or statutory rules of evidence or by technical or statutory rules of procedure, except as provided by this chapter, but may make such investigation or inquiry, or

conduct the hearing, in a manner that will best ascertain the rights of the parties.

The Commission has a “great deal of latitude in evidentiary matters.” *Bryant v. Staffmark, Inc.*, 76 Ark. App. 64, 61 S.W.3d 856 (2001). Respondents No. 1 waived any objection to the consideration of this testimony—if not through the first exchange, then certainly through their own cross-examination, in which they essentially “plowed the same ground” that Claimant did on direct. Moreover, I find that admission of this testimony will help to “best ascertain the rights of the parties.” Thus, Claimant’s proffered testimony by Bennie Ladd should be and is hereby admitted into evidence.

### **CASE IN CHIEF**

#### **Summary of Evidence**

\_\_\_\_\_ Two witnesses testified at the hearing: Claimant and Bennie Ladd.

In addition to the prehearing order discussed above, the exhibits admitted into evidence in this case consist of the following: Joint Exhibit No. 1, medical records of Claimant, consisting of one index page and 18 individually numbered pages thereafter; and Joint Exhibit 2, a one-page medical record of Claimant dated August 17, 2006. Also, an October 30, 2007 letter, plus two attachments, from counsel for Respondents No. 1 to me, a November 1, 2007 letter from me to Claimant’s counsel, and a November 7, 2007 letter from Claimant’s counsel to me have been blue-backed to the record in this case.

#### **Testimony**

James Doyle Runyon. Claimant testified as follows:

He has worked for Respondent Bennie Ladd Farms for 21 years. He had a previous job-related injury in 1995 while working for Respondent employer. While carrying a tailgate for a trailer, he tripped and the tailgate fell on top of him. He injured his back and ultimately

saw Dr. Steven Cathey, a neurosurgeon. Prior to the incident at issue, the last time he had back treatment was when he went back to Dr. Cathey in 2005 “to see if he could give me some relief.”

He stated that on or around August 18, 2006 (he later stated that it may have actually been August 16), he suffered an on-the-job injury near Bald Knob while operating a truck owned by Respondent Bennie Ladd:

Well, we haul watermelons in bin boxes. And when it starts raining, you have to tarp them down, you know, keep them from getting wet because your bin boxes will swarm on you. And I was throwing a tarp over. I was walking around the edge of my trailer because you stack your bin boxes and you turn your pallets sideways. Well, our trailers were only seven foot [sic] wide. I was walking around on the pallets when my foot slipped and I fell off the trailer.

The trailer sits two-and-a-half to three feet off the ground. Claimant testified that his back and legs struck the ground first, and he first felt pain or discomfort in his lower back. He was unable to complete the trip only because of mechanical problems with the truck. As soon as he got back to the farm that same day, he reported the accident to Bennie Ladd, the owner of Respondent Bennie Ladd Farms.

Ladd told him that he was going to call the insurance company and sent Claimant to the doctor. Claimant first saw Dr. Falwell in Newport, his family physician, the next day. The doctor gave him muscle relaxers. However, Claimant stated that this did not relieve his discomfort. Bobby Bowen, the Farm Bureau Insurance agent, then sent him to the Augusta Clinic. He was eventually seen there by Dr. Amy Daniels, who referred him to Dr. Steven Cathey. He referred Claimant to Dr. Annette Meadors for pain management. Dr. Meadors gave Claimant some injections in his back—four on two separate occasions. She was to administer treatment to deaden the nerves in Claimant’s back to alleviate the pain,

but this did not occur because Farm Bureau refused to pay for any further treatment. He stated that Dr. Meadors' treatment helped and that he would like to complete it.

Claimant testified that his back pain was a 7/10 after the 1995 accident, but became 9/10 after the incident at issue. However, he has not missed work because he needs the money. At present, his work on the farm is limited to driving a truck, tractor and combine. Others perform any needed lifting for him, which is a change from his previous duties. He has not had any injuries to his back other than the one at issue.

When questioned by Respondents No. 1, Claimant stated that on August 30, 2006, after his accident, he underwent an MRI. However, he was not aware of the results. He testified that the treatment by Dr. Meadors reduced his pain to a 7/10, but now it is back to 9/10. When asked about the date of his previous injury, Claimant admitted that it could have occurred in 1994 instead. After his 1995 injury, he applied for Social Security disability benefits because "I was hurting so bad I was trying to get some help. None of the doctors could help me so that's the only way I knew to go." But he maintained in his testimony that his pain is worse now that it was then. In 1998, he quit taking the medication for his back because it was not helping.

With respect to his September 19, 2005 visit to Dr. Cathey, around 11 months before the incident at issue, Claimant stated that he was seeking relief for his lower back and was only sleeping three hours a night. He then testified that he is still only averaging three hours a night, but quickly added that it is sometimes only two. He also stated that after his 1995 accident up until the 2006 incident, any activity he performed to a significant degree—sitting, standing and stooping, for example—would result in pain. His former activities that he has had to curtail was due to his 1995 accident, not the incident in 2006.

Claimant clarified that when he testified on direct about his work modifications, he was referring to post-1995, not post-2006. He underwent physical therapy after the 1995 incident and, like in 2006, had pain radiating down both legs. However, Claimant stated that his pain was “worsen [sic] now than it used to be.”

Bennie Ladd. Called by Claimant, Ladd testified as follows:

He is a self-employed farmer and Claimant works for him. He wants Claimant to obtain further medical benefits. He stated that after Claimant was injured in 1995, he contacted Bobby Bowen, his Farm Bureau Insurance agent. Ladd did not have workers' compensation coverage at the time. After the Farm Bureau medical benefits ran out, Ladd stated that he paid for Claimant's treatment.

In August 2006, Claimant reported that he had fallen off his trailer while trying to tarp it near Bald Knob and had injured his back. Ladd stated that he did not question the accuracy or truthfulness of the statement and called Bowen. However, he did not know that Bowen, who handled all of his insurance, was not going to report the injury to the workers' compensation carrier. He did not find out until the \$5,000.00 limit ran out on the Farm Bureau policy. Bowen then informed him that he would turn in the claim to the workers' compensation carrier.

Ladd testified that after the 2006 accident, he tried to lighten Claimant's duties as much as possible, but admitted that the adjustments were “minor because [his duties] were modified so great to begin with [after the 1995 accident].”

### Records

Joint Exhibits 1 and 2. Claimant's medical records reflect the following:

Pre-incident. On November 18, 1994, he underwent an MRI of the lumbar spine that was found to be normal. Another lumbar MRI, performed on May 6, 1996, was found to be essentially normal with only mild degenerative changes.

Dr. Cathey wrote Dr. William Kent on September 19, 2005 a letter that reads in pertinent part:

Thanks for allowing me to see Mr. Runyon to render a second opinion regarding his chronic lower back pain. As you recall, this began after an injury at work ten years ago. The pain will occasionally radiate down both legs, particularly on the right side in a nonsegmental pattern. He does not have a history of sciatica, radicular leg pain, lumbar claudication, etc. The patient's low back pain has been refractory to trials of physical therapy, medication, steroid injections, etc.

His neurological examination is negative. He specifically has no sign of lumbar radiculopathy. Straight leg raising is negative bilaterally. The patient demonstrates full range of motion of the lumbar spine without paraspinous muscle spasm.

I reviewed the patient's old medical records. He has had two negative MRI scans of his low back, the last one in 1996. Mr. Runyon says he has also had a myelogram that was apparently negative.

Dr. Kent, I feel certain Mr. Runyon is the victim of degenerative lumbar disc disease with some associated osteoarthritis. Unfortunately, this is not something that will respond favorably to lumbar disc surgery or other neurosurgical intervention. This was apparently the same conclusion reached by Dr. Rick Kyle when he evaluated Mr. Runyon several years ago in Jonesboro. We talked about a variety of chronic coping mechanisms for what will undoubtedly be a long term problem. This includes epidural steroid injections, another round of physical therapy, chiropractic manipulation, etc. Lastly, I provided him with some samples of Skelaxin 800 mg t.i.d., you would certainly want to avoid narcotic analgesics in a case such as this.

Post-incident. On August 17, 2006, Claimant presented to Dr. Wade Falwell with back and right hip pain, which he attributed to a fall from a trailer "last Friday." He was noted to be tender in his lower back along his paraspinal muscles, and was assessed as having back pain/strain and prescribed, inter alia, Soma and Ibuprofen.

On August 25, 2006, Claimant presented to the Augusta Medical Clinic with a back injury he stated occurred when he fell off a trailer while working for “Benny [sic] Ladd Farms.” He complained of lower back pain that went into his legs, with the right leg pain being worse than the left. He underwent an MRI of the lumbar spine on August 29, 2006 that radiologist Dr. Charles Jeffery stated showed “no significant abnormality.”

When he returned to the clinic on September 1, 2006, Dr. Amy Daniel noted that while Claimant stated that he was told in 1995 that he had a “neuronal compromise,” his MRI then was normal. She offered him physical therapy and muscle relaxers, which he declined. Claimant was then referred to Dr. Cathey.

Dr. Cathey on October 19, 2006 wrote the following to Dr. Daniel Moore:

I am writing to bring you up-to-date on Mr. Runyon. He returned today after suffering an exacerbation of chronic lower back pain. The patient apparently fell out of the back of a truck in August and since then has complained of increased pain in his lower back with some occasional radiation to his right leg. Mr. Runyon has had lower back pain off and on for over ten years. Indeed, his initial back injury was also work related. In the past, his pain has been refractory to trials of medication, physical therapy, etc.

Happily, his neurological examination remains negative. He specifically has no sign of lumbar radiculopathy, and straight leg raising is negative bilaterally. While there is point tenderness noted in his lower back on the right, no paraspinal muscle spasm or restriction of movement was noted.

The patient and I reviewed a recent MRI scan of lower back obtained in August. I certainly agree with the radiologist in that there is no evidence of any significant abnormalities (e.g. disc herniation, compression fracture, spinal stenosis, etc.)

Dr. Moore, I reassured Mr. Runyon that his pain is well explained on the basis of a musculoskeletal injury. I suppose his chronic lower back pain is secondary to degenerative lumbar disc disease. Unfortunately, this is still not something that will respond favorably to lumbar surgery or other neurosurgical intervention. I have, however, referred Mr. Runyon to Dr. Annette Meador, an excellent pain management specialist here in North Little Rock for consideration of epidural steroid injections, trigger points, etc. This

is one of the few things the patient has never tried to manage his chronic lower back discomfort. As always, I stand ready to reevaluate the patient, particularly should his pain change in character or location.

When referred to Dr. Meador on December 29, 2006, Claimant was suspected of having lumbar spondylosis and facetogenic pain, along with myofascial lumbosacral pain.

His history taken by her reads in pertinent part:

Mr. Runyon is a 53-year-old employee of Benny [sic] Ladd Farms who complains of low back pain radiating down both legs, worse in the right leg. He has had a history of back pain for the last ten years, when he was injured as an 18 wheeler tailgate fell on him. Then, on 8/18/06 he was trying to tarp down some watermelons when he fell off of a flatbed trailer and landed flat on his back. Sitting, standing, and stooping aggravates his pain. Nothing has been helpful. He has not had any physical therapy. He does not do any stretching exercises.

...

His MRI of the lumbar spine was normal. He was seen by Dr. Steven Cathey who noted a normal neurological examination and referred him here for consideration of trigger point injections or epidural steroid injections, etc. His nerve conduction studies by Dr. Sauer revealed mild right S1 radiculopathy. The pain is worse with sitting, standing, and stooping, and he ranks his pain as a 9 on the visual analog scale.

Dr. Meador recommended, inter alia, three level bilateral medial branch blocks to determine if Claimant has facetogenic pain. He underwent the first block that day, and a second on January 20, 2007.

On May 1, 2007, Dr. Cathey wrote the following to Claimant's counsel:

I am responding to your inquiry of April 25, 2007 regarding my patient, James D. Runyon. As you indicated in your correspondence, my report of October 19, 2006 did suggest the patient had suffered a musculoskeletal injury related to a fall from a truck bed in August of the same year.

Mr. McLarty, it is my opinion that the patient did suffer an aggravation of a pre-existing condition (i.e. long standing [sic] degenerative lumbar disc disease). It is still my belief that Mr. Runyon would benefit from an evaluation by Dr. Annette Meador as I have suggested in the past. To put

it in medical/legal terms, I believe the musculoskeletal injury to be the “major cause” for the exacerbation of his chronic low back pain. This opinion is stated to a reasonable degree of medical certainty.

Blue-backed documents. On October 30, 2007, following the hearing, counsel for Respondents No. 1 wrote to me the following letter, which reads in relevant part:

As you recall, we made closing statements in this matter. Mr. McLarty pointed to an EMG as evidence of an objective finding. As you may recall, I indicated that I was not aware of an EMG being done for his claim. The report that Mr. McLarty was referring to was from Dr. Meador and it referred to an EMG done by Dr. Sauer. I am enclosing a copy of that EMG that was previously provided to Mr. McLarty. I would note that it indicates that the EMG showing an S1 radiculopathy was done in 1996.

The report attached to the letter was as described by counsel.

On November 1, 2007, I wrote Claimant’s counsel, giving him seven days to respond. He did so, writing the following on November 7, 2007:

Pursuant to your letter of November 1, I provide this response to Bill Frye’s letter of October 30<sup>th</sup>. Upon review of the records accumulated in this case I am in agreement with Mr. Frye’s letter concerning the results of earlier testing done on Mr. Runyon and I withdraw from my closing summation any reference to said report.

## **ADJUDICATION**

### A. Compensability

Claimant has contended that on or around August 17, 2006 (based upon his statement to Dr. Falwell on August 17, 2006 that the fall happened “last Friday,” the date in question would appear to be August 11, 2006) he sustained a compensable injury as the result of falling off of a trailer that he was tarping—a duty he was performing for his employer, Respondent Bennie Ladd Farms. In turn, Respondents No. 1 have argued that Claimant did not suffer a compensable injury.

Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2002), which the I find applies to the analysis of Claimant's alleged injury, defines "compensable injury":

(i) An accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2002). "Objective findings" are those findings that cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16). The element "arising out of . . . [the] employment" relates to the causal connection between the claimant's injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant's employment "when a causal connection between work conditions and the injury is apparent to the rational mind." *Id.* If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In light of this standard, Claimant's claim must be denied. His medical records are devoid of objective findings of injury. His August 29, 2006 MRI was found to contain "no significant abnormality" by Dr. Jeffrey. Dr. Cathey agreed with this finding, and noted that his neurological examination was negative as well. In Dr. Cathey's opinion, Claimant suffered a musculoskeletal injury, which aggravated a pre-existing condition of degenerative lumbar disc disease. But Dr. Cathey cited no objective findings in support of his assessment. He stated that the alleged musculoskeletal injury is the "major cause" of the aggravation; but that is the standard for a gradual-onset injury, which is not alleged

here. The Commission is authorized to accept or reject a medical opinion and is authorized to determine its medical soundness and probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002); *Green Bay Packing v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 692 (1999). Based upon my review of the evidence, I cannot credit Dr. Cathey's findings.

When asked about the existence of objective findings during closing argument at the hearing, Claimant's counsel cited Dr. Meador's mention of EMG by Dr. Sauer that showed an S1 radiculopathy. However, as explained by the blue-backed documents discussed above, the EMG was conducted in 1996 and, as concede by Claimant, is not relevant here.

B. Reasonable and Necessary Medical Care

Because of the above finding, the other issue litigated at the hearing— whether Claimant is entitled to reasonable and necessary medical care—is moot and will not be addressed.

**CONCLUSION**

Claimant bears the burden of proving by a preponderance of the evidence that his alleged injury is compensable. He has been unable to do this. Therefore, his claim must be, and hereby is, denied and dismissed.

**IT IS SO ORDERED.**

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Hon. O. Milton Fine II  
Administrative Law Judge