

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F005742

ERNEST HUGHEY,
EMPLOYEE

CLAIMANT

IRON HORSE PAPER MILL,
EMPLOYER

RESPONDENT

AMERICAN INTERSTATE INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED SEPTEMBER 24, 2003

Upon review before the FULL COMMISSION in Little Rock,
Pulaski County, Arkansas.

Claimant represented by HONORABLE ROBERT L. DEPPER, JR.,
Attorney at Law, El Dorado, Arkansas.

Respondents represented by HONORABLE MIKE RYBURN, Attorney
at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed and
adopted.

OPINION AND ORDER

The claimant appeals from a decision of the
Administrative Law Judge filed May 7, 2003. The
Administrative Law Judge entered the following findings of
fact and conclusions of law:

1. The stipulations agreed to by the parties at
the prehearing telephone conference conducted
on October 28, 2002, and contained in the
Prehearing Order filed that same date are
hereby accepted as fact.
2. Claimant has failed to prove by a
preponderance of the evidence that the

medical treatment he has incurred for his lower back subsequent to the previous hearing is reasonably necessary in connection with his admittedly compensable low back injury.

3. Claimant has failed to prove by a preponderance of the evidence that the additional medical treatment recommended by Dr. Pryhodko in the nature of an IDET or a fusion is reasonably necessary in connection with claimant's admittedly compensable low back injury.

We have carefully conducted a de novo review of the entire record herein, and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct, and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

JOE E. YATES, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____ I must respectfully dissent from the opinion of the majority finding that claimant failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment.

This claim is being denied primarily on a finding that claimant sustained a new injury at home while moving debris from his yard. This finding of an independent intervening cause absolves respondent of any further liability for benefits. However, claimant had remained symptomatic prior to the April 2000 incident, with an increase in symptoms resulting from movements as innocuous as turning the wrong way. In my opinion, there is insufficient evidence that claimant actually sustained a new injury in April 2002 while working in his yard. The facts of this case more appropriately support a finding that claimant's condition represents a mere recurrence of the prior compensable injury. Accordingly, I would reverse the opinion of the Administrative Law Judge and award claimant additional medical treatment.

For the foregoing reasons, I must respectfully dissent.

SHELBY W. TURNER, Commissioner