

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F201344

MICHAEL GIBSON, EMPLOYEE	CLAIMANT
TURNER INDUSTRIES, EMPLOYER	RESPONDENT
CRAWFORD AND COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 17, 2003

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

Claimant represented by HONORABLE KENNETH A. OLSEN, Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE FRANK B. NEWELL, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

## OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed January 10, 2003.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The employee-employer-carrier relationship existed at all relevant times.
2. The claimant is entitled to the maximum compensation rates.
3. The preponderance of the evidence reflects that the claimant did not sustain a compensable injury on November 30, 2001.

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.

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OLAN W. REEVES, Chairman

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JOE E. YATES, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

\_\_\_\_\_I must respectfully dissent from the majority finding that the claimant did not establish that his cervical injury was the result of a compensable injury. I believe that the Administrative Law Judge did not properly evaluate the medical evidence, and the majority, in

affirming and adopting his opinion, has compounded that error.

The claimant testified that on November 30, 2001, while working as a welder, he was struck on the head by a piece of falling pipe insulation. While the respondent has questioned how large this piece or pieces of insulation were, there does not seem to be any dispute that the incident did in fact occur. The central dispute in this case is over whether the claimant's cervical condition, and resulting fusion surgery, was the result of this incident. The respondent contended, and the Administrative Law Judge found, that the claimant's symptoms were the result of a preexisting condition.

There is no doubt that prior to November 30, 2001 the claimant was receiving treatment for what had been diagnosed as mild carpal tunnel syndrome. This treatment began on July 17, 2001 when the claimant was seen by Dr. Tracy Phillips. Dr. Phillips stated in his chart notes of that date that the claimant was suffering from a tingling sensation through the right arm. In a second chart note dated October 29, 2001, Dr. Phillips once again set out that the claimant was experiencing some tingling in his right arm and hand. Dr. Phillips directed the claimant to undergo an NCV study and referred him to Dr. Charles Clark, a Pine Bluff Orthopedist.

In an office note dated November 19, 2001, Dr. Clark stated that the NCV test indicated early carpal tunnel syndrome. Dr. Clark gave the claimant a steroid injection and a splint to wear at night. The claimant did not seek medical treatment again until he returned to Dr. Phillips on December 26, 2001. In a chart note of that date, Dr. Phillips stated that the claimant's arm was still tingling and that he was suffering from severe pain. Dr. Phillips also noted the claimant was suffering from radiculopathy. Dr. Phillips directed the claimant to undergo a cervical MRI and referred him to Dr. P.B. Simpson, a Pine Bluff Neurosurgeon.

Dr. Simpson saw the claimant on January 9, 2002 and reviewed the MRI results with the claimant. In Dr. Simpson's progress notes of that date, he described the claimant as having classic radicular pain starting in the neck and going down the right shoulder, right arm, and into the index and middle fingers of the right hand. Dr. Simpson also recites that the claimant had a history of this type of pain and that he did not remember anything which had caused this problem. Dr. Simpson went on to recommend that the claimant undergo cervical fusion at the C6-C7 level.

The fusion was performed on January 11, 2001, in the progress note of that date, Dr. Simpson stated that he found multiple extruded fragments of disc material which he

removed, thereby eliminating the impingement on the claimant's cervical nerve root. The claimant reported immediate relief of his pain and symptoms upon awakening from surgery.

According to the claimant's testimony, it was not until after the surgery when Dr. Simpson visited him in the hospital that he connected the incident with the falling insulation and his neck condition. The claimant testified that Dr. Simpson had told him that the number of disc fragments in his neck had been likely caused by some type of blow or traumatic injury. The incident with the falling insulation was the only event that the claimant could recall that could have caused such an injury. This conversation probably occurred on January 12, 2002 and is corroborated by Dr. Simpson's note of February 1, 2002. In a report dated May 3, 2002, Dr. Simpson once again mentions the claimant's injury and states that, based upon the information given to him, it was his opinion, within a reasonable degree of medical certainty, that the claimant's injury was the major cause of his herniated cervical disc.

In denying the claim, the Administrative Law Judge made a clear factual error which the majority has chosen to ignore. After summarizing the evidence and stating that he was denying the claim, the Administrative Law Judge made the following statement:

"The primary difficulty the claimant has in this case is that it appears that the claimant had nearly identical symptoms prior to the date of the alleged compensable injury, (November 30, 2001), as he did after the alleged compensable injury. He complained of neck, arm and hand pain prior to the injury, and complained of neck, arm and hand pain after the injury. While the aggravation of a pre-existing condition by a specific incident arising out of and in the course of employment may be compensable without a showing that the employment was the major cause of the disability, there is no medical evidence in the current claim which indicates that a small piece of insulation striking the claimant could cause the problems he has experienced."

This statement is clearly erroneous and suggests that the Administrative Law Judge, and the majority, did not review the medical evidence contained in the record.

The record contained four medical reports dated prior to November 30, 2001. While they refer to tingling, or having tenderness in the claimant's fingers, hand, and elbow, none of them mention any pain or radicular symptoms involving the claimant's neck or shoulder. In fact, Dr. Clarke, an Orthopedic Surgeon, was of the opinion that the claimant was suffering from carpal tunnel syndrome. The claimant testified at the hearing that the steroid injections and the wearing of the hand splint gave him substantial relief from his symptoms. However, the medical records after November 30, 2001 note the presence of "severe pain" and radicular symptoms going from the claimant's neck

and upper back into his shoulder and down into his arm. These post injury reports document symptoms markedly different from those generated prior to November 30, 2001.

The record also reflects that it was Dr. Phillips that referred the claimant to Dr. Simpson for treatment of his condition. This is significant since Dr. Phillips was the one who diagnosed the claimant's carpal tunnel syndrome and referred him to Dr. Clark, an Orthopedist. Clearly, Dr. Phillips was of the opinion that the symptoms being suffered by the claimant after November 30, 2001 were of a different nature than those he had previously treated. So much so that he directed the claimant to undergo a different test, an MRI as opposed to NCV, and referred him to a different specialist, a neurosurgeon, instead of an orthopedist.

The Administrative Law Judge also erred when he states that there is no medical evidence indicating that the claimant's injury could have caused his cervical condition. As indicated above, Dr. Simpson stated in his report of May 3, 2002 that, ". . . it would be my medical opinion, within a reasonable degree of medical certainty, that this injury definitely attributes greater than 51% of the cause of this condition of a HNP C6-7 right side."

In short, the Administrative Law Judge's conclusion that "the primary difficulty the claimant has in this case is that it appears that the claimant had nearly

identical symptoms prior to the date of the alleged compensable injury as he did after the alleged compensable injury," is undeniably wrong. The medical report generated after his injury lists symptoms different than those listed prior to his injury. For the Administrative Law Judge to have based his opinion on a conclusion to the contrary, is certainly grounds for reversal in itself. However, the Administrative Law Judge goes a step further and states that there is no medical evidence connecting the claimant's injury to his condition. However, as indicated above, Dr. Simpson specifically stated in his medical report that the injury sustained by the claimant was the major cause of the claimant's herniated cervical disc. Once the medical evidence is fully reviewed, it is obvious that the Administrative Law Judge reached an incorrect result and should be reversed. I would find that the claimant is entitled to all appropriate benefits resulting from his injury.

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SHELBY W. TURNER, Commissioner