

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F004385/F009253/F003142/F103768

JOHN MOSLEY, EMPLOYEE CLAIMANT

MOSLEY CONSTRUCTION CO., EMPLOYER RESPONDENT NO. 1

AIG CLAIM SERVICES, INSURANCE CARRIER RESPONDENT NO. 1

TRAVELER'S INDEMNITY CO., CARRIER RESPONDENT NO. 2

OPINION FILED JULY 22, 2003

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

Claimant represented by HONORABLE LEWIS E. RITCHEY, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by HONORABLE FRANK B. NEWELL, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by HONORABLE ROBERT H. MONTGOMERY, 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 September 26, 2002.

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

1. That the Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. That the stipulations agreed to by the parties at the pre-hearing conference conducted on June 13, 2002, and contained in a pre-hearing order filed June 13, 2002, as well as those at the hearing herein, are hereby accepted as fact.
3. That the Claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable specific incident injury to his back, or a compensable aggravation of any pre-existing back condition on December 18, 2001; specifically, I find that Claimant has failed to prove Claimant has failed to prove (sic) that he sustained any back injury or aggravation of a pre-existing back condition with medical evidence supported by objective findings establishing the injury or aggravation, and that said (sic) arose out of and in the course of his employment, and was caused by a specific incident and is identified by time and place of occurrence; additionally, the Claimant has failed to establish causation by a preponderance of either the objective medical evidence, expert medical opinion, or the non-medical evidence in the record.
4. That there is insufficient proof that Claimant has any medical condition at the L4-5, or L5-S1

area of his lumbar spine which requires any medical attention.

5. That the Claimant has failed to prove by a preponderance of the credible evidence that any low back condition in the L4-5 or L5-S1 area is a recurrence of his compensable injury of October 17, 1997; specifically, such low back condition was not the natural consequence of the October 1997 compensable injury sustained by Claimant where Claimant was hit in the head by a board; and such admittedly compensable injury produced no objective findings as to any possible back injury having been sustained by Claimant as a result of the injury.

6. That the Claimant has failed to prove by a preponderance of the credible evidence that his low back condition in the L4-5 or L5-S1 area is a recurrence of his compensable injury of December 12, 1999 or August 8, 2000; specifically, such low back condition was no the natural consequence of either the December 12, 1999 or August 8, 2000 compensable injury sustained by Claimant; and the Claimant has failed to prove by either objective medical evidence, expert medical opinion, or a preponderance of the credible non-medical evidence in the record that there was any causal relationship between either the December 12, 1999 or August 8, 2000 injury and any low back condition at L4-L5 or L5-S1.

7. That Claimant has failed to prove by either objective medical evidence, expert medical opinion, or a preponderance of the credible non-medical evidence in the record that he is entitled to any additional medical treatment of any alleged back condition for which any Respondent herein should be liable; specifically, I find that any additional treatment of any condition at the L4-5 or L5-S1 area of Claimant's lumbar spine is not reasonably necessary or causally related to any of Claimant's three previous compensable injuries; further, in view of the three previous compensable injuries, he has failed to prove that any one or more of his compensable injuries is the major cause of his need for any said treatment.

8. That the Claimant has failed to prove by a preponderance of the evidence that he was entitled to receive temporary total disability benefits for the period from August 8, 2000 to July 27, 2001; specifically, Claimant has failed to establish that he remained in any healing period following his August 8, 2000 compensable injury and was totally incapacitated from earning wages on account of said compensable injury during the period from August 8, 2000 to July 27, 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.

OLAN W. REEVES, Chairman

JOE E. YATES, Commissioner

Commissioner Turner dissents.