

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F111491

IKE NUNN,
EMPLOYEE

CLAIMANT

RAY FOWLER FRAMING,
EMPLOYER

RESPONDENT

ONE BEACON INSURANCE,
INSURANCE CARRIER

RESPONDENT

OPINION FILED NOVEMBER 24, 2003

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

Claimant represented at the hearing by HONORABLE BILL E.
BRACEY, JR., Attorney at Law, Blytheville, Arkansas and
HONORABLE JAY TOLLEY, Attorney at Law, Fayetteville,
Arkansas, on appeal.

Respondents represented by HONORABLE MICHAEL 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 July 17, 2003. The
Administrative Law Judge entered the following findings of
fact and conclusions of law:

1. There was an employer-employee relationship
on August 23, 2000.
2. The compensation rate is \$187.

3. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable lumbar strain injury to his back on August 23, 2000.

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

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____ I must respectfully dissent from the majority opinion, which affirms and adopts the decision of the

Administrative Law Judge that claimant failed to prove a compensable injury.

The Administrative Law Judge found the claimant's claim to be non-compensable, apparently primarily on the basis of Dr. Guy L'Heureux's report of medical evaluation. However, a close review of Dr. L'Heureux's report indicates that it does not in any way preclude the compensability of the claimant's claim. Dr. L'Heureux acknowledged that the claimant's November 1, 2000 MRI revealed a "bulging disc" at L5-S1 (which the radiologist had described as a "herniation"), but stated that the April 4, 2003 MRI showed that the "bulging disc" had disappeared.

Even if Dr. L'Heureux's interpretation of the April 4, 2003 MRI is credited, I am at a loss to understand how the disappearance of the herniation indicates that claimant did not experience a compensable injury on August 23, 2000. The fact remains that a November 1, 2000 MRI revealed that the claimant had a herniation at L5-S1. Thus, the claimant clearly met his burden of proving the existence of injury to his back with evidence of objective findings. Therefore, in determining whether claimant met his burden of proof, the relevant question should be whether this herniation was caused by a work incident on August 23, 2000.

In determining compensability, the fact that the herniation may have disappeared by April 4, 2003 is irrelevant.

Furthermore, the Administrative Law Judge states that "[t]he weight that the claimant's testimony is entitled to receive is greatly diminished by his lack of veracity." However, the Administrative Law Judge does not offer any analysis in support of the conclusion that the claimant's hearing testimony is not credible. Furthermore, and in any event, the Administrative Law Judge's opinion does not explain why any lack of credibility on the part of claimant causes him to fail to meet his burden of proof.

For these reasons, I respectfully dissent.

SHELBY W. TURNER, Commissioner