

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F101706

RUSSELL PETTYCORD, EMPLOYEE	CLAIMANT
BRIDGESTONE FIRESTONE, INC., EMPLOYER	RESPONDENT
CUNNINGHAM LINDSEY, INSURANCE CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 4, 2003

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

Claimant represented by HONORABLE LAURA MCKINNON, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE BETTY J. DEMORY, 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 November 27, 2002.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties and set forth above are hereby accepted as fact.
3. The claimant failed to prove by a preponderance of the evidence that he sustained a new injury in October of 2000.

4. The claimant failed to prove by a preponderance of the evidence the elements necessary to prove a compensable injury in October of 2000.

5. The respondents controverted the claim for an injury in October of 2000 in its entirety.

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 majority opinion finding that claimant failed to prove by a preponderance of the evidence that he sustained a compensable injury on October 17, 2000.

On July 7, 1999, claimant sustained an admittedly compensable injury to his lower back. Claimant received conservative treatment and did not experience any disability. On January 12, 2000, Dr. Russell Allison evaluated claimant, opined that he had reached maximum medical improvement, and released him from his care. Dr. Allison reported that claimant "states his back is not bothering him any." Dr. Allison added that claimant "should not have any further problems."

Claimant continued working for the employer performing essentially light duty work. However, at some point in September or October 2000, claimant returned to his regular job, which involved twisting while lifting 50 to 60 pounds. Claimant testified that on October 17, 2000, he twisted to the left while carrying the product and experienced a sharp pain in his lower back that "went down." Claimant described his symptoms as identical to those he experienced as a result of the 1999 compensable injury. However, claimant testified that he had been pain free for an extended period of time.

Much debate centers around whether claimant informed Jewell Cutright, the plant nurse, of the October 2000 work-related accident. Claimant testified that when he reported his injury to the nurse, she described his condition as congenital and preexisting and directed him to apply for benefits under accident and sickness rather than workers' compensation. Claimant testified he had no choice but to apply for A & S, if he was to receive any financial assistance. Cutright's testimony is, not surprisingly, contrary to claimant's. However, the evidence indicates that prior to presenting to the plant nurse, claimant had informed Darrell Marshall, a co-worker and current employee of the employer, that he had just hurt his back during a lifting incident at work. Further, Damon White and Joseph Heflin, also co-workers and current employees, testified that they knew claimant had hurt his back. Heflin testified that Marshall had informed him that claimant had hurt his back "booking a tube." It seems incredible to me that claimant would inform these co-workers that he had just injured his back and then change his story when reporting the incident to the plant nurse.

Based on claimant's credible testimony that he had been pain free for a period of time after being released from the 1999 injury, that he sustained an injury at work on October 17, 2000, and that he timely notified the plant

nurse of his work-related injury, I find that claimant has proven by a preponderance of the evidence that he sustained a compensable injury.

For the foregoing reasons, I must respectfully dissent.

SHELBY W. TURNER, Commissioner