

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F011654

MICHAEL BELL,  
EMPLOYEE

CLAIMANT

IDEAL CONSTRUCTION COMPANY, INC.,  
EMPLOYER

RESPONDENT

NATIONAL FIRE INSURANCE  
COMPANY OF HARTFORD,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED NOVEMBER 8, 2004

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

Claimant represented by HONORABLE WILLIAM KIRBY MOUSER,  
Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by HONORABLE FRANK B. NEWELL,  
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 October 16, 2003. The  
Administrative Law Judge entered the following findings of  
fact and conclusions of law:

1. The claimant does not demonstrate by a  
preponderance of the evidence of record that  
he has closed head injuries or low back  
injuries as a result of his compensable  
injury of September 30, 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.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, 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 sustained closed head and/or lumbar injuries during the admittedly compensable work-related accident.

On September 30, 2000, claimant was flagging traffic when an automobile struck him from behind. Claimant hit the windshield and sustained multiple, serious injuries. He was immediately transported to a local hospital, but thereafter had to be air lifted to the University of Arkansas Medical Center. The most pressing or overriding injuries included lacerations to his scalp and a hangman's fracture of C-2, with subluxation and acute kyphosis at the C2-C3 disc space. All ligaments at the C-2 disc level were disrupted. Claimant underwent a cervical fusion on October 3, 2000. Respondent accepted as compensable the lacerations to his head and the cervical injury. However, respondent refused to accept claimant's lumbar difficulties and denied any treatment or diagnostic studies which could have determined whether claimant sustained a closed head injury as a result of the work-related accident.

Concerning the lumbar condition, there is no evidence that claimant experienced any symptoms involving his lumbar spine prior to the compensable accident. It is entirely understandable that the treating physicians focused on the much more serious cervical injury. However, on the day of the injury, claimant also complained of pain, numbness, and tingling in his right lower extremity.

Thereafter, claimant continued to complain of numbness and tingling in the lower extremity on a fairly consistent basis. Once his cervical complaints began to ease, the medical professionals could focus on his lumbar complaints. Electrodiagnostic studies documented right L4-5 radiculopathy, which correlated, and was entirely consistent, with claimant's complaints of pain in the right anterior thigh and pain radiating into his toes. Dr. Sonya Williams, one of claimant's treating physicians, opined that a causal connection exists between claimant's lumbar difficulties and the work-related accident. Respondent denied Dr. Williams' recommendations that claimant be evaluated by an occupational therapist, as well as continue the successful use of a TENS unit. Based on this evidence, I find that claimant has met his burden of proving by a preponderance of the evidence that he sustained a lumbar injury during the work-related accident.

When claimant was run over by the automobile, his head crashed into the windshield. As noted above, claimant sustained the obvious severe lacerations to his head. Thereafter, Dr. Williams' recognized claimant's cognitive dysfunction and wanted to have claimant checked out by the neurology department at the University of Arkansas Medical

Center. However, respondent had already suspended the payment of all compensation benefits and denied liability for this evaluation. While claimant's cognitive dysfunction may be in the mild range, he is still entitled to have this condition checked out at respondent's expense. In my opinion, claimant is entitled to an evaluation by the neurology department to determine whether he suffers from an organic brain injury, which is causally related to the compensable accident. Terrell v. Arkansas Trucking Service, 60 Ark. App. 93, 959 S.W.2d 70 (1998).

For the foregoing reasons, I must respectfully dissent. The opinion of the Administrative Law Judge should be reversed.

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SHELBY W. TURNER, Commissioner