

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F212600

LISA BARR, EMPLOYEE	CLAIMANT
C.L.SWANSON, EMPLOYER	RESPONDENT
CINCINNATI INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED JANUARY 9, 2004

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

Claimant represented by HONORABLE JAY TOLLEY, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE WILLIAM C. FRYE, 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 25, 2003

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

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on May 12, 2003, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.
2. The parties' stipulation that claimant earned an average weekly wage which would entitle her to compensation at the rate of \$165.00 for temporary total disability benefits and

\$154.00 for permanent partial disability benefits is also hereby accepted as fact.

3. The claimant has filed to prove by a preponderance of the evidence that her back problems subsequent to March 7, 2002, are causally related to her original compensable injury.

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 decision of the majority opinion, which affirms and adopts the decision of the Administrative Law Judge that claimant failed to prove entitlement to additional medical and indemnity benefits for her compensable injury.

The Administrative Law Judge denied the claimant's claim for further benefits solely because he found that none of the claimant's lower back problems subsequent to March 7, 2002 were in any way causally related to the claimant's November 6, 2001 compensable injury. My review of the evidence indicates that this finding of the Administrative Law Judge is erroneous.

The evidence which the Administrative Law Judge used in support of this findings was (1) on March 7, 2002, claimant's chiropractor indicated that claimant report great improvement under his care, (2) claimant did not visit a doctor complaining of low back pain from March 7, 2002 to September 6, 2002; and (3) claimant related in her hearing testimony that she took a weekend camping trip the weekend before her low back pain returned.

As to the first and second observations, I do not find the fact that claimant experienced a period of relief from her low back symptoms to in any way indicate a lack of causation between the November 6, 2001 compensable injury and the claimant's current problems. It was only a six-month period, and it is probable, in my opinion, that the claimant simply experienced temporary relief from her pain symptoms, as often happens in lower back injury cases.

As to the third observation, I do not find the claimant's hearing testimony to amount to a statement by the claimant that the weekend camping trip actually *caused* the return of her back pain, as the Administrative Law Judge apparently interpreted it to be. The relevant testimony is as follows:

Q: Do you remember telling [Dr. Tucker] that you had had low back pain onset one week ago?

A: Yes.

Q: And what were you doing that caused the onset of the back pain in September of '02?

A: What was I doing in '02? When I went and seen him and I told him - it was the weekend when it came back. We had went camping that weekend.

Q: Did you push on anything, lift anything?

A: No. My husband sets the tent up. He does all that.

*T. at 30-31.* I find that the claimant was merely indicating that at the time her back pain returned, she was on a camping trip. It is speculative, in my opinion, to conclude based upon this testimony that the camping trip actually caused the return of the claimant's low back symptoms. But in any event, even if the camping trip did cause the return of the symptoms, such fact would not indicate that her current symptoms bore no causal relation to the compensable injury. As stated previously, it is quite common for low back symptoms to resolve for a period of time and then return.

Furthermore, the claimant underwent an MRI on January 13, 2003. The radiologists' report of that MRI states in relevant part as follows:

....There is desiccation of the L4-5 intervertebral disc space. There is a small midline disc protrusion with a tiny amount of fluid within the protruded fragment *that can be seen with acute injury.*

IMPRESSION:

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2. Small disc protrusion is identified in the midline that is subligamentous and does have a small amount of fluid signal intensity present within it *that can be seen with acute injury*, but not demonstration of extruded disc fragment.

*CX1, p. 8-3* (emphasis added). Given that the radiologist described an acute injury to the claimant's lumbar spine, and given that there is no evidence in the record of any other acute injury except the work accident, I find that the work injury is the most likely cause of this injury. Furthermore, the subsequent reports of Dr. Raben indicate, in my opinion, that the findings on the MRI are the cause of the claimant's current low back problems. Therefore, I find that the claimant has clearly proven by a preponderance of the evidence that her current low back problems bear some causal relation to her November 6, 2001 compensable injury.

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SHELBY W. TURNER, Commissioner