

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F211324

JAMES H. GOFFIN, EMPLOYEE CLAIMANT

WACKENHUT CORPORATION, EMPLOYER RESPONDENT

CAMBRIDGE INTEGRATED SERVICES GROUP,  
INSURANCE CARRIER RESPONDENT

OPINION FILED MAY 11, 2004

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

Claimant represented by HONORABLE ROBERT L. DEPPER, JR.,  
Attorney at Law, Pine Bluff, Arkansas.

Respondent represented by HONORABLE FRANK B. NEWELL,  
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 July 31, 2003.

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

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employee-employer-carrier existed among the parties on June 16, 2002, at which time the claimant was earning sufficient wages to entitle him to a compensation rate of \$223.00/\$167.00. This claim has been controverted in its entirety.

2. The claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable injury, caused by a specific incident, arising out of and in the course of his employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.

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 majority opinion finding that claimant's injury was not a compensable injury as defined by Ark. Code Ann. § 11-9-102. After conducting a de novo review of the entire record, I find that the Administrative Law Judge erred in denying Claimant's entitlement to benefits relating to his back injury, and the opinion of the Administrative Law Judge should be reversed.

FACTS

Claimant was working for Wackenhut Corporation as a security guard. His job duties included patrolling the plant area inside and outside the facility to ensure protection from chemical leaks, fires or break-ins. He patrolled the outside area on a golf cart. On June 16, 2002, the battery on Claimant's golf cart died while he was patrolling the wood yard area. The battery charger was in the guard house which was quite a distance from the wood yard area. Claimant decided to push the cart to the boiler room, which was closer than the guard house, to try and locate another cart. Claimant simultaneously pushed and steered the golf cart on an uphill grade until he reached a level ground area. At that time, the golf cart slipped and

rolled backwards and he had to lean over the cart to prevent it from rolling down the hill. At that time, Claimant felt what he described as a "joint slip and a sort of stinging pain" on the lower right quadrant of his back. When Claimant arrived at the boiler room, he saw a co-worker named Gary Barnes and asked him to help him transport the golf cart to the guard station. Mr. Barnes drove Claimant's car and pushed the golf cart with the front bumper of the car to the guard station while Claimant steered the golf cart. On the way to the guard station, the golf cart began working again and Mr. Barnes returned Claimant's car to its previous location. Once again, the golf cart stopped running on a steep slope near the guard station. Claimant had to push the cart a second time and as he was pushing he felt another pop in his back. Claimant testified that his back became stiff later that day.

Claimant testified that he gave notice to Sergeant Bardley two to three days after the incident that he believed he may have injured his back when he was pushing the golf cart. However, he testified that he did not realize the extent of his injury and that he thought it would go away. Claimant continued to work until approximately July 7<sup>th</sup> or 8<sup>th</sup> of 2002.

A few days after pushing the golf cart, Claimant could not sit up in bed because of his lower back pain. He scheduled an appointment with his primary care physician, Dr. Joe H. Wharton. Dr. Wharton treated Claimant with pain medications, physical therapy and instructed him to take time off work. Claimant was on leave from work until July 26<sup>th</sup> or 29<sup>th</sup>, 2002, before he contacted the Area Supervisor, Mr. Boyd Atkinson, regarding his options for sick leave. Mr. Atkinson informed Claimant that sick leave was not available and asked him if his injury was work related. Claimant told Mr. Atkinson that he believed his back problem was caused by the golf cart incident. Immediately after the conversation with Claimant, Mr. Atkinson prepared the first report of injury form for Claimant.

Dr. Wharton continued to treat Claimant until he could no longer control Claimant's pain with conservative measures. On August 9, 2002, Dr. Wharton referred Claimant to Dr. David Reding, a neurosurgeon in Little Rock. Dr. Wharton's initial office notes stated that Claimant's problem began two to three months prior to his appointment and his condition was of an unknown origin. Later, on September 19, 2002, Dr. Wharton authored a retraction

stating that he had erroneously dictated that the Claimant had his particular problem over the last three months. He stated the intent of that statement was that the Claimant had sacroiliitis over the three-month period, not that he had lumbar disc disease or sciatica for the past three months.

Dr. Reding's initial notes made during the course of Claimant's treatment indicate that Claimant related that "he put a significant strain on his back when he had to push the golf cart, but that he did not realize that he had an injury at that time." Claimant told Dr. Reding that he noticed stiffness and pain in his back three to four days after the incident. The MRI of Claimant's lumbar spine reviewed by Dr. Reding on that same day revealed a moderate disc rupture at L4-5 on the right side, which Dr. Reding believed caused Claimant's symptoms. Based on the fact that Claimant had not responded to conservative measures, Dr. Reding decided to perform a lumbar laminotomy, medical facetectomy and nerve root decompression at L4-5 and at L5-S1 on Claimant's right side. The surgery was performed on August 21, 2002.

The Claimant's only other back injury was a lumbar strain after a fall on April 29, 1998, which he did not

dispute. On that date, his X-rays showed degenerative changes in the neck, but no bony abnormalities of the lower back. Claimant was referred for an MRI on the lumbar spine on July 27, 1998 and the MRI was negative. Claimant was diagnosed with lumbar strain, prescribed medication and taken off work for two days. The Claimant testified that he had no back pain after September of 1998.

#### **ANALYSIS**

The party having the burden of proof on the issue of compensability must establish it by a preponderance of the evidence. Ark. Code Ann. § 11-9-704(c) (2) (Repl. 2002). In determining whether a claimant has sustained his or her burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. § 11-9-704; Wade v. Mr. C Cavanaugh's, 298 Ark. 363, 768 S.W.2d 521 (1989); and Fowler v. McHenry, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

In order to prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: (1) an injury arising out of and in the course of employment; (2) that the injury caused internal or external harm to the body which required medical

services or resulted in disability or death; (3) medical evidence supported by objective findings , as defined in Ark. Code Ann. § 11-9-102(16), establishing the injury; and (4) that the injury was caused by the specific incident and identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102(4) (A) (i) (Repl. 2002).

It has long been recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury upon a showing that the injury manifested itself within a reasonable period of time following the incident, is logically attributable to the incident, and there is not other reasonable explanation for the injury. Hall v. Pittman Construction Co., 235 Ark. 104, 357 S.W.2d 263 (1962).

I find that Claimant's testimony shows a causal connection between his injury and the work related incident because he testified that he felt pain when pushing the golf cart on June 16, 2002 and he made an appointment with his physician only four days after the incident on June 20, 2002. Likewise, Claimant's testimony is consistent with the medical evidence, the deposition of Dr. Wharton and the medical records from Dr. Reding. The Claimant's medical records contain no evidence of an injury to Claimant's

lumbar spine region excepting the lumbar strain that was treated during April 1998 through September 1998. Claimant's medical records do, in fact, support the causal connection required to prove a compensable injury. Claimant's MRI of the lumbar spine on July 27, 1998 was negative. The MRI reviewed by Dr. Reding on August 9, 2002, less than two months after Claimant's golf cart incident revealed a moderate disc rupture at L4-5 on the right side which required surgery. Neither the Claimant, nor any other witness, presented another explanation or testified that Claimant had an injury outside the workplace that would cause his particular injury. Therefore, I find that Claimant has established a causal connection between the work incident and his injury.

The Full Commission recognizes that medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16)(B). Expert opinions based on "could," "may," or "possibly" lack the definiteness required to prove causal connection. Frances v. Gaylord Container Corp., 341 Ark. 527, 20 S.W.3d 280 (2000). However, where a medical opinion is sufficiently clear to remove any reason for the trier of fact to have to guess at the cause of the injury, that

opinion is stated within a reasonable degree of medical certainty. Huffy Service First v. Ledbetter, 76 Ark. App. 533, 69 S.W.3d 449 (2002), citing Howell v. Scroll Tech., 343 Ark. 297, 35 S.W.3d 800 (2001).

Dr. Wharton's response was sufficiently clear to show a causal connection between the injury and the golf cart incident. In Dr. Wharton's deposition, when asked whether he could testify within "a reasonable degree of medical certainty" that the pushing of the golf cart caused Claimant's physical manifestations, he stated, "Yes, it caused it."

I find that Claimant has shown by a preponderance of the evidence a compensable back injury entitling him to benefits. He testified that he hurt his back while pushing a golf cart at work, he gave notice and the medical evidence supports his testimony.

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SHELBY W. TURNER, Commissioner