

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F100666

DANIEL H. JONES, EMPLOYEE	CLAIMANT
TIRE TOWN OF BENTON, EMPLOYER	RESPONDENT
UNION STANDARD INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED JANUARY 23, 2004

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

Claimant represented by HONORABLE TERENCE C. JENSEN,
Attorney at Law, Little Rock, 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 May 5, 2003.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.
2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times, including December 28, 2000, when the claimant sustained a compensable low back injury when his average weekly wage was \$330.00.

3. The preponderance of the evidence fails to show a sufficient causal connection between the claimant's compensable injury and the herniated disk revealed by an MRI scan in June, 2002, and, thus, fails to show that he is entitled to the additional medical expenses and temporary total disability benefits requested.

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 in all respects affirms and adopts the decision of the Administrative Law Judge that claimant failed to prove entitlement to additional benefits.

The Administrative Law Judge denied the claimant's claim for further benefits because he found a lack of causal connection between the claimant's herniated disk revealed on the 2002 MRI and the 2000 work injury. My review of the evidence indicates that the claimant has consistently suffered from low back pain from the time of the December 2000 injury to the date of the hearing. While the claimant admitted that his low back pain has been worse at times than at other times, the whole of the evidence in the record indicates that claimant's low back pain never completely resolved, such that any of the claimant's current low back problems could be found to have no causal connection to the December 28, 2000 work injury.

Furthermore, the Administrative Law Judge, for reasons not stated, discredited the medical opinion of Dr. Jim Moore. In his deposition testimony, Dr. Moore testified as to his opinion of the cause of the claimant's herniated disk. While Dr. Moore testified that his initial examination of the claimant revealed no sign of herniation,

he testified that in his opinion, the December injury bore a causal relation to the herniation. The relevant testimony was as follows:

Q: Can you say here today what caused that disk herniation, I mean, what trauma?

A: Well, he has multiple history of problems with his back since December - beginning with December of 2000.

Q: Okay.

A: Certainly, a backhoe tire, trying to manhandle that is a significant traumatic incident, more so than a light window air conditioner. The man has had ongoing symptoms and has seen different doctors in the emergency room. He didn't see me, which he should have done, but he didn't see me for whatever reason, but did continue to follow with complaints of pain, as you've discussed. I would say that the backhoe tire would be the most significant traumatic episode with the air conditioner, light window air conditioner being secondary. *Deposition of Dr. Moore, pp. 31-32.*

For these reasons, I find that the claimant proved by a preponderance of the evidence that his current back problems bear a causal relation to the December 28, 2000 compensable injury. For this reason, I recommend reversal of the Administrative Law Judge's determination that claimant failed to prove entitlement to additional benefits.

For these reasons, I respectfully dissent.

SHELBY W. TURNER, Commissioner