

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F212497

CHARLES NUNN, EMPLOYEE	CLAIMANT
EXPRESS FLEET MAINTENANCE, EMPLOYER	RESPONDENT
TRAVELERS INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED JULY 22, 2004

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

Claimant represented by HONORABLE CONRAD ODOM, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE PHILLIP CUFFMAN, 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 January 9, 2004.

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 14, 2003, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability benefits or medical treatment as a result of his 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.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turners dissents.

DISSENTING OPINION

_____ I must respectfully dissent from the opinion of the majority finding that claimant is not entitled to additional medical treatment or temporary total disability

benefits because he failed to prove by a preponderance of the evidence that his current condition is causally related to the compensable injury.

On October 23, 2002, claimant sustained an admittedly compensable lower back injury while he was applying pressure on a wrench in an effort to loosen a bolt on a truck during routine maintenance. Claimant was directed to see Dr. Rebecca Lewis for treatment. Dr. Lewis diagnosed a lumbar strain and prescribed physical therapy and various medications. Claimant was placed on light-duty work restrictions. Claimant had some difficulty performing even these job duties. When claimant became concerned about keeping his job with the employer, he requested and received an unconditional release to return to normal activities by Dr. Lewis. Claimant's concerns appeared justified because he was discharged by the employer on or about December 12, 2002 for excessive tardiness and absences, which claimant attributed to the physical problems he experienced as a result of the compensable injury. Thereafter, respondent refused to authorize any additional treatment and claimant could not obtain treatment on his own because he could not afford it. In February or March 2003, claimant finally had

to present to the emergency room of a local hospital. Claimant credibly testified that he had never had any prior back problems and had not had any lower back injuries, except the work-related injury in October 2002.

Based on claimant's credible testimony, plus the lack of sufficient evidence of any nonwork-related explanation for, or independent intervening cause of, his lumbar difficulties, I find that a causal connection still exists between claimant's lumbar condition and the compensable injury. Accordingly, the opinion of the Administrative Law Judge should be reversed.

SHELBY W. TURNER, Commissioner