

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F302843

TIMMY MILLS,
EMPLOYEE

CLAIMANT

WEYERHAEUSER COMPANY,
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED APRIL 12, 2004

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

Claimant represented by HONORABLE ZAN DAVIS, Attorney at
Law, Little Rock, Arkansas.

Respondents represented by HONORABLE ANDREW IVEY, Attorney
at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed.

OPINION AND ORDER

Respondent appeals the September 9, 2003 opinion
of the Administrative Law Judge finding that claimant
sustained a compensable lower back injury.

The only issue on appeal is whether claimant's
lower back condition is causally related to his employment.
Claimant has the burden of proving the causal relationship
by a preponderance of the evidence. Horticare Landscape
Mgmt. v. McDonald, 80 Ark. App. 45, 89 S.W.3d 375 (2002).
Questions of credibility and the weight and sufficiency to
be given evidence are matters within the province of the
Workers' Compensation Commission. Swift-Eckrich, Inc. v.

Brock, 63 Ark. app. 118, 975 S.W.2d 857 (1998). After our de novo review of the entire record, we find that claimant has met his burden of proof and, accordingly, affirm the opinion of the Administrative Law Judge.

Claimant's primary job with the employer was operating a front end loader. Claimant had previously sustained a work-related back injury in April 2000 while driving a loader for this employer. Conservative treatment was carried out, a February 2001 MRI scan revealed no abnormalities, and Dr. Safman released claimant from his care in March 2001 without any restrictions or permanent anatomical impairment. Claimant did not receive any treatment for his back until after the incident which forms the basis of this claim.

Claimant testified that on February 7, 2002, he injured his back and experienced significant back pain when the front end loader he was operating hit a pothole. Claimant immediately reported the injury to Terry Mays, the assistant supervisor on the job at that time. Mays and claimant immediately filled out an accident report. Further, Mays called Joe Esham, claimant's regular supervisor, before she left at the end of the shift and informed him of the injury.

Claimant continued to work as his symptoms waxed and waned. The employer assisted claimant by modifying his job duties to keep him off the loader as much as possible. Approximately a week before he first received treatment in May 2002, claimant was at work when pain and numbness went down his leg and into his foot. This scared claimant because he had never had these symptoms before, and he decided to seek medical attention. Another MRI scan revealed the presence of a herniated nucleus pulposus at L5-S1. Claimant received conservative treatment and continued to work with only a few weeks of disability resulting from his back condition. In addition to the above evidence, Dr. David Allen, claimant's treating physician, opined that there is a causal connection between claimant's back problems and the February 2002 work-related accident. Further, there is absolutely no evidence whatsoever of an independent intervening cause of claimant's back condition.

Based on claimant's credible testimony and the opinion of Dr. Allen, we find that claimant has proven by a preponderance of the evidence that his lower back condition is causally related to his employment.

For the foregoing reasons, we affirm the opinion of the Administrative Law Judge. Respondent is directed to comply with the award of benefits set forth in the opinion

of the Administrative Law Judge. All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.