

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F300429

RANDALL C. TURNER, EMPLOYEE	CLAIMANT
VIRCO MANUFACTURING CORP., EMPLOYER	RESPONDENT
ZURICH AMERICAN INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED DECEMBER 6, 2004

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

Claimant represented by HONORABLE THOMAS W. MICKEL, Attorney at Law, Conway, Arkansas.

Respondent represented by HONORABLE MICHAEL R. MAYTON, 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 March 5, 2004.

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

1. An employer-employee-carrier relationship existed on October 21, 2002, at which time the claimant was earning sufficient wages to entitle him to a compensation rate of \$349.00/\$262.00, in the event this claim is found to be compensable.
2. The Respondents have controverted the claimant's entitlement to any additional benefits.

3. The preponderance of the evidence fails to establish that the claimant's medical problems and disability at issue beginning in October of 2002 are a recurrence of his earlier work-related injures or a new 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 Turner dissents.

DISSENTING OPINION

I dissent from the Majority opinion finding that Claimant's October, 2002, disability and subsequent surgeries were not related to his previous work-related injuries.

It is undisputed that Claimant sought medical treatment in 1999 and 2002 for back pain incurred as a result of moving dies at Virco weighing between 250 and 900 pounds. It is also undisputed that on both occasions Claimant promptly reported back pain to his supervisor and was ultimately referred to the company doctor, Dr. Gil Johnson.

Claimant had a recurrent episodes of back pain, which he testified were identical to the pain in experienced in 1999, while engaging in non-work activities in August, 2001 and September, 2002. Claimant was also diagnosed with a muscle strain in 1997 after complaining of back pain, but testified that the pain completely resolved prior to 1999. The medical records show that he only saw his family physician one time regarding that incident.

On October 21, 2002, Claimant testified that he experienced the worse back pain he had ever felt while brushing his teeth at home. An MRI revealed a large central HNP at L3-4 that appeared to be causing impingement. Dr. Anthony Russell, a neurosurgeon, performed a discectomy at L3-4 and nerve root decompression on December 11, 2002. Following the surgery, Claimant continued to complain of back pain. An MRI report dated January 10, 2003, stated that "patient reports symptoms since 1999." The MRI showed postoperative changes at L3-4 and a broad base disc bulge with a small central annular tear.

On January 10, 2003, Dr. Russell opined that Claimant herniated disk was caused by his back injury:

As sometimes happens in these cases, the question is regarding the etiology of his initial disk herniation. In discussing the activities of his job, it is clear that the initial injury occurred around 1999 when he was attempting to move a large dye onto a press. This weighs several hundred pounds and entails sliding the dye over to the press while pivoting the lower body. This would be the only thing that would explain a L3-4 disk, which is extremely rare unless there is a direct injury. I am convinced that this is the initial source of his abnormality rather than the relatively benign incident of brushing his teeth.

Claimant underwent a second surgery for recurrent disc herniation at L3-4 on April 10, 2003. On April 16, 2003, Dr. Russell estimated that Claimant had a permanent impairment rating of 13% based on the fact that he underwent two back surgeries. In August, 2003, Dr. Russell referred Claimant to Dr. Thomas Hart for an evaluation of pain management. Dr. Hart performed a discogram on November 14, 2003. At the hearing, Claimant testified that he had another appointment scheduled with Dr. Hart and that he has not returned to work since the October, 2002 incident.

I find that Dr. Russell's opinion is reliable to establish that Claimant's herniated disc and period of disability beginning in October, 2002 were caused by Claimant's 1999 injury at Virco. Though Dr. Johnson's notes in 1999 state that the injury was to the parathoracic and not the lumbar spine, there are no diagnostic findings to establish this opinion. Claimant consistently testified, and the medical records show, that immediately after the 1999 work injury he experienced pain in his lower back and legs. In the years following, the record shows that Claimant experienced recurrences of that same type of pain in his legs and back. Claimant testified that these episodes of

pain, which were triggered by various work and non-work related incidences, mimicked the pain he experienced in 1999 after moving dies in excess of 200 lbs. at Virco. Additionally, Claimant testified that the muscle strain he incurred in 1997 was minor and resolved prior to the 1999 incident. The medical records also show that Claimant did not return for treatment for back complaints until the 1999 injury at Virco.

For these reason, I find that Claimant's disability that began in October, 2002, which ultimately required two surgeries and other medical treatment, was caused by Claimant's 1999 work-related injury.

SHELBY W. TURNER, Commissioner

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