

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F308934

DANIEL SUTTERFIELD, EMPLOYEE	CLAIMANT
UNITED AUTO GROUP, INC., EMPLOYER	RESPONDENT
ACE AMERICAN INSURANCE CO., INSURANCE CARRIER	RESPONDENT

OPINION FILED OCTOBER 28, 2004

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

Claimant represented by HONORABLE TERENCE C. JENSEN,
Attorney at Law, Benton, Arkansas.

Respondents represented by HONORABLE MICHAEL E. RYBURN,
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed and
adopted.

OPINION AND ORDER

The claimant appeals from a decision of the
Administrative Law Judge filed April 8, 2004. The
Administrative Law Judge entered the following findings of
fact and conclusions of law:

1. There was an employer-employee relationship
on January 24, 2003
2. The compensation rate is \$82.
3. The claimant has failed to prove by a
preponderance of the evidence that he
sustained a compensable injury in the course

of and arising out of his employment on
January 24, 2003.

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 find that Claimant, age 24, incurred a compensable neck injury when a television mounted to a wall fell and struck the back of his neck while Claimant was

working as a security guard for Respondent on January 24, 2003. As such, I dissent from the majority opinion and find that Claimant is entitled to compensation for his injuries.

The preponderance of the evidence supports a finding in favor of Claimant. Claimant testified that he did not have any lacerations following the event because he was wearing a thick patrol jacket. He testified that he telephoned Sergeants Plouch and Kizer, whom he worked under at the Bryant Police Department, after the accident and that he reported his injuries to Respondent's daytime security guard the morning after the incident. Sergeant Kizer also testified that Claimant described the incident to him and complained that his neck was "really, really sore." Respondents did not present any witnesses to refute these testimonies.

The medical record shows that Claimant did not have neck pain prior to this incident other than pain associated with migraines. However, after this work-related injury, Claimant developed intense neck pain and pain radiating down his arms. The MRI scans showed "bulging disc at C5-6 and C6-7." Claimant's work-related injuries are the only plausible explanation in the medical records for the presence of bulging discs in Claimant's neck.

For these reasons, I dissent from the majority opinion and find that the Administrative Law Judge's opinion should be reversed. Accordingly, I find that Claimant is entitled to compensation for this injury.

SHELBY W. TURNER, Commissioner