

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F309903

GARY CHEATHAM,
EMPLOYEE

CLAIMANT

BARLOWORLD HANDLING,
EMPLOYER

RESPONDENT

LIBERTY MUTUAL INSURANCE CO.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED NOVEMBER 10, 2005

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

Claimant represented by the HONORABLE EVELYN BROOKS,
Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE JAMES A.
ARNOLD, II, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed March 14, 2005. In said
order, the Administrative Law Judge made the following
findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on December 15, 2004, and contained in a pre-hearing order filed December 16, 2004, are hereby accepted as fact.
2. The parties' stipulation that claimant earned sufficient wages to entitle him to the maximum compensation rate in effect

for 2003 (TTD \$440.00, permanent partial disability 330.00) is also hereby accepted as fact.

3. Claimant has failed to prove by a preponderance of the evidence that his neck condition is causally related to the injury of September 7, 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.

Therefore we affirm and adopt the March 14, 2005 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

The claimant suffered an admittedly compensable injury to his face and head on September 7, 2003. The respondent has conceded that in this injury, the claimant suffered significant injury to his face. However, they have refused to accept liability for any injuries to the claimant's neck. An Administrative Law Judge found that the claimant failed to establish any entitlement to benefits based upon a neck injury and the Majority has affirmed and adopted that result. However, based upon my de novo review of the record, I find that the claimant offered sufficient evidence to establish that he suffered an injury to his neck in his compensable accident of September 7, 2003, and I therefore respectfully dissent from the Majority's findings to the contrary.

At the time of his injury, the claimant had been employed by the respondent for 17 years as a diesel mechanic. On September 7, 2003, a brake chamber upon which he was working exploded, striking him in the face, breaking his nose and knocking him unconscious. The claimant received immediate treatment for his injuries to his nose and face, as well as pain medication.

However, the claimant testified that he continued to experience excruciating headaches and other body pains following this injury. According to the claimant, these severe pains did not ever recede, even though they were somewhat lessened by the pain medication which was prescribed. Eventually, the claimant changed employers in an attempt to find a job that did not require as much heavy lifting. He was successful in doing this, but his symptoms of severe pain continued unabated.

Eventually, the claimant received a neurosurgical consultation and underwent an MRI. The findings of the MRI are documented in a report dated September 1, 2004. That report notes the presence of a small midline disc bulge at C3-C4; a broad base spondylosis; mild neuroforaminal narrowing and a right sided disc herniation with some effacement of the spinal cord at C4-C5; severe spondylosis and severe bilateral neuroforaminal narrowing with a superimposed left sided disc herniation with mild cord effacement at C5-C6; and a right sided disc herniation.

While it is true that the claimant has a past history of receiving medical treatment, chiefly of a chiropractic nature, for back and neck pain, there is no indication that he suffered any herniated discs prior to his compensable accident. I also note that the claimant

had a substantial amount of degenerative changes in his neck which would account for the occasional pain and stiffness for which he received chiropractic treatment. However, the herniated discs discovered by the MRI scan were described as being "superimposed" on his degenerative condition. Considering that herniated discs are often traumatic injuries, and that the occurrence of the claimant's compensable injury coincides with a significant amount of pain and other radicular symptoms, it seems to me that the only conclusion that can be reached in this case is that the claimant suffered an injury to his neck in his compensable accident of September 7, 2003. In my opinion, the Majority's decision is not a reasonable interpretation of the evidence presented in this case.

For that reason, I respectfully dissent from the Majority's holding.

SHELBY W. TURNER, Commissioner