

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F300749

JERRY L. CHILDRESS, EMPLOYEE	CLAIMANT
EAGLE PAPER, INC., EMPLOYER	RESPONDENT
AMERICAN HOME ASSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED APRIL 27, 2005

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

Claimant represented by HONORABLE GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

Respondent represented by HONORABLE JOHN P. TALBOT, Attorney at Law, Pine Bluff, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed May 17, 2004.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties and set forth above are hereby accepted as fact.
3. I find that the claimant failed to prove by a preponderance of the evidence the elements of necessary to establish a

compensable injury under the Arkansas Workers' Compensation Law.

4. The respondents controverted this claim in its entirety.

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 affirming and adopting the Administrative Law Judge's denial of benefits for claimant's neck and back injuries. After reviewing the majority opinion, I find that it fails to adequately consider medical evidence corroborating claimant's testimony regarding causation and fails to consider objective findings establishing compensability. Because I find that claimant's injuries are causally connected to his employment and supported by objective medical evidence, I dissent.

The claimant started working for the respondent on March 19, 2002. The claimant was described as "a very good employee" by the respondent. Claimant testified that he was injured on December 5, 2002, while operating a Bobcat for the respondent. The claimant was required to turn his head to make sure he did not back into anything since the Bobcat was not equipped with a rear-view mirror. He testified that his normal duties consisted of running a forklift and a Bobcat eight (8) to ten (10) hours a day. He stated that on the day of the injury, he was turning the Bobcat, with his

head turned, and felt something pop through his back, between his shoulder blades, and right at the base of his neck. At the time he felt the pop, he stated that he felt sharp pain that went down both his shoulders, his legs, and his back. He immediately stopped the forklift and got off. This occurred thirty (30) minutes before the end of his shift. He reported the injury to two (2) co-workers and his supervisor. He testified that he did not resume work and left at the end of his shift. He made repeated stops while driving home in order to relieve his pain. After attempts at home to relieve the pain failed, he went to the emergency room in Magnolia later the same evening.

Claimant's girlfriend, Judy Blackwell, testified that she had lived with the claimant for ten (10) to twelve (12) years. She testified that he had come home from work and was hurting real bad with back, neck, and shoulder pain. At his request, she took him to the emergency room. She testified that she observed the claimant in severe pain and that he told her that his back popped at work. She testified that he had prior complaints with bursitis in his left shoulder, but did not recall any complaints about prior problems with his neck or back.

Dr. Franks saw the claimant at the Magnolia Hospital emergency room on December 5, 2002. Dr. Franks noted in his written report that the claimant, "stated that he has had some neck pain. He states that he feels like the pain shoots down from his neck into his hands. He states that he drives a forklift and his pain has been worse since he has been working." He concluded that the claimant had radicular hand pain and possible disc disease. He directed the claimant to undergo an MRI of his cervical spine.

The next day, on December 6, 2002, the claimant was seen by Dr. Haynes at Claibourne Family Medical Clinic. Dr. Haynes noted that the claimant stated that he had pain in the base of his neck and that while he was at work on the day before he was using his arms and shoulder to steer a vehicle and constantly looking back over his shoulders which caused increasing pain and stiffness in the base of his neck, resulting in a decrease in range of motion with stiffness at the base of his neck. He concluded that the claimant had a ligamentous strain of muscles of his neck and referred claimant for an MRI of cervical disc disease.

On January 13, 2003, the claimant was given a neurological examination by Dr. George Martinez, M.D. In

describing his condition, the claimant described cervical and low back pain from a sudden twist and pop in his neck and lumbosacral region while working a forklift and cart for the respondent in the middle of December. Claimant further stated that he had not returned to work since the date of the injury. Dr. Martinez's impressions were as follows:

1. Herniated cervical disc associated with spondylosis and spinal canal stenosis at C5-6 associated with cervical myleopathy and radiculopathy, left.
2. Bilateral carpal tunnel syndrome.
3. Lumbosacral pain etiology undetermined.

Dr. Martinez recommended surgery. Subsequently, the claimant sought medical attention at LSU Medical Center in Shreveport due to their charity policy. The claimant testified that his health insurance was refusing to pay any medical bills on the basis that it was work-related. The claimant testified that he was seen by Dr. Heard, a neurosurgeon, who performed another MRI. At the time of the hearing, the claimant was scheduled for surgery. No medical records were introduced at the hearing relating to the medical treatment or subsequent MRI performed at LSU Medical Center.

By way of this appeal, the claimant contends that he has met his burden of proof in all respects and that the decision of the Administrative Law Judge denying compensability of the claim is not supported by substantial evidence. Respondents assert that the claimant's versions of the events are inconsistent and contradicted by the medical records. They further assert that the claimant's back and neck problems are degenerative and not the result of a workplace injury. In determining that the claimant did not prove an injury arising out of and in the course of his employment, the Administrative Law Judge gave significant weight to the emergency room reports.

I find, however, that a closer examination of the emergency room report reveals that the emergency room intake report contains a number of errors:

- 1) Refers to the patient as "Mr. Franks," although the claimant's name is Jerry Childress and Franks is the doctor.
- 2) Refers to the age of the patient as "52" and "53"
- 3) Nurse's intake notes reflect that the claimant "complained of pain in left hand started about 2 p.m. was on 4-wheeler riding, states unable to grip with left hand ... denies trauma." The treating emergency room physician, Dr. Jason Franks, notes the claimant's

history of present illness as that of neck pain shooting down from his neck to his hands which has reportedly worsened while driving a forklift at work.

On cross-examination, the claimant denied telling the emergency room personnel that any of his injuries were related to a four-wheeler accident. No credible evidence was offered by the Respondents to support a conclusion that claimant was injured in a four-wheeler accident. Moreover, the treating physician's note is consistent with the claimant's version that he reported the injury as work-related.

In evaluating the claimant's credibility, the Administrative Law Judge also noted "inconsistencies" in the record and "the fact that the manner in which claimant alleges the compensable injury occurred is found solely in his own statements and testimony". In support, the Administrative Law Judge pointed to co-worker James Beasley's written statement that he was not told about the injury until the next day and co-worker Ralph May's written statement that he did not see the claimant get hurt on the job.

A closer review reveals that these statements do not contradict the testimony of the claimant. Beasley's statement is in fact consistent with and corroborates the testimony of claimant describing the time, place, and nature of the injury. Beasley recalled that the claimant had told him that he "hurt his back riding the bobcat" and had been "hurt on the job". The only real contradiction in testimony arises from the recollection of whether the conversation between the claimant and Beasley occurred on the date of the injury (per the claimant) or on the following day (per Beasley). In light of the fact that the claimant never returned to work after the injury, the claimant's recollection that the conversation took place on the date of the injury is more credible. It is also significant to note that in May's statement, he did not refute that he was told by the claimant of the injury at the time of the injury, only that he "did not see Jerry get hurt on the job". In addition to the description of the events given to his co-workers, claimant also testified that he notified his foreman that he had experienced a pop in his back or neck and that his arms and legs hurt. Respondents failed to produce the foreman as a witness to either confirm or deny

this testimony notwithstanding their contention and defense that the employer was not properly notified of the injury.

The Administrative Law Judge further suggests that claimant's history of his condition was altered after learning of nature and severity of his condition at the emergency room. The Administrative Law Judge found that the statements by the claimant regarding his history changed, "after he became aware of the severity and nature of his condition." Such a conclusion is simply not supported by the medical records or other credible evidence.

The record reflects that the Administrative Law Judge relied, in part, on the testimony of Scott Robertson, a manager for the employer. In direct testimony, Scott Robertson stated that he was not aware that claimant contended that he had injured himself while riding the Bobcat at work for two to three months. However, Robertson acknowledged that he knew claimant was off work because he had a sore back and planned to see a doctor as of December 13, 2002, (8 days after the accident). Robertson further testified that he became aware that the claimant was seriously hurt on December 17, 2002. Medical records from Dr. Haynes' office reflect notes that an AIG Claims service

representative was contacted on December 12, 2002, regarding workers' compensation authorization. Robertson further testified that it was possible that the claimant had reported his work-related injury to his foreman, Corky, on the day of the injury and to Robertson's brother, Bill.

The claimant consistently described the injury as work-related on the day of the injury to his co-workers, his supervisor, his girlfriend, the emergency room personnel and on the next day to his regular medical doctor. The severity and nature of his condition was not determined until the MRI was performed in January of 2003, at least one month after the date of the injury.

The Administrative Law Judge further discredited the claimant's testimony on the basis that the medical records indicated that the claimant has a history of relatively heavy alcohol usage. I disagree with the Administrative Law Judge's conclusion that the fact claimant may have an alcohol problem necessarily renders him unworthy of belief, especially in the instant case where there was no evidence that alcohol usage contributed to the causation of the injury. Similarly, the Arkansas Court of Appeals has recently noted their disagreement with findings that the

fact that a person with a drug addiction necessarily renders him unworthy of belief. White v. Baker Engineering, CA 04-585 (Ark. App. March 23, 2005).

In the instant case, the claimant's disability occurred immediately after he heard the pop in his neck and felt the pain. He sought medical treatment immediately. There has been no other evidence offered to explain the claimant's condition. It has long been recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury upon a showing that the injury manifested itself within a reasonable period of time following the incident, is logically attributable to the incident, and there is not other reasonable explanation for the injury. Hall v. Pittman Construction Co., 235 Ark. 104, 357 S.W.2d 263 (1962); Wentz v. Service Master, 75 Ark. App. 296, 57 S.W. 3rd 753 (2001). If the claimant's disability arises soon after the accident and is logically attributable to it, with nothing to suggest any other explanation for the employee's condition, we may say without hesitation that there is no substantial evidence to sustain the Commission's refusal to make an award. Clark v. Ottenheimer, 229 Ark. 383, 314 S.W.2d 497 (1958); Johnson

v. Little Rock School District, Full Commission Opinion filed April 4, 2002 (E700511 & F011921).

With the exception of the errant reference to a four-wheeler in the emergency room report, the substantial weight of the evidence clearly leads to only one conclusion -- that the claimant has shown that he suffered an injury that was caused by a specific incident identifiable by time and place, and arose out of his employment.

I find that claimant has also shown that the injury caused physical harm established by objective findings. Specifically, an MRI performed on January 13, 2003, revealed evidence of a herniated cervical disc associated with spondylosis and spinal canal stenosis at C5-6. There is objective medical evidence that the claimant has a herniated disc in the same area where he first felt the pop and pain.

Finally, I find the neck and back pain is not the result of prior injuries and or degenerative disease as asserted by Respondents. The Administrative Law Judge observed that the claimant described a gradual onset of problems to the emergency room personnel and summarily concluded that the greater weight of evidence failed to

support a conclusion that the claimant sustained a work-related injury. In denying compensability, the Administrative Law Judge did not consider any of the objective medical evidence presented by the parties. While it is undisputed that claimant suffered from pre-existing shoulder pain, the objective medical evidence, claimant's symptoms, and other testimony in the record supports a conclusion that claimant's injuries were sustained as of a specific date and time rather than from a degenerative process over time that would have occurred whether or not claimant sustained an injury.

In Davis v. Helena Chemical Co., claimant suffered from a preexisting lumbar degenerative condition before sustaining a compensable injury. Full Commission Opinion, filed August 3, 1999 (D406121). The Full Commission affirmed an administrative law judge's finding that claimant was entitled to additional medical treatment, stating:

The respondents' and the dissent's central argument in this case is that the treatment the claimant is presently receiving is because of an ongoing degenerative condition which would be occurring whether or not the claimant suffered an injury in 1984. However, this argument overlooks the fact that the claimant's previously asymptomatic degenerative process physically

progressed and became symptomatic because of his 1984 compensable injury....the compensable injury, not some speculative event, is what resulted in the claimant's present condition.

Id.

The Full Commission later upheld a finding of compensability where symptoms of claimant's preexisting condition were asymptomatic for five years prior to the compensable event. Jerry Hambelton v. Guy King & Sons, Inc. & Bituminous Casualty Corp., Full Commission Opinion, filed February 22, 2001 (E904812). The Commission held that a preponderance of the evidence showed that claimant's symptoms were the result of his compensable injury, despite the fact that claimant had a preexisting ongoing degenerative process. Id. at 19.

Respondents argue that the x-rays from Willis Knighton Pierremont Health Center in February, 2003, reveal degenerative changes and no "evidence of trauma". However, the MRI of January of 2003, as read by Dr. Martinez, a neurologist, shows a herniated disc in the same area where the claimant felt his neck pop. Claimant describes the pain he suffers from this injury as different from prior pain associated with his shoulder. This testimony is corroborated

by the medical records and the testimony of claimant's witness. The claimant's girlfriend testified that she observed the claimant in severe pain on the day in question and that the claimant had never complained of neck and back pain prior to this time. Moreover, while the claimant had missed work occasionally once every month or two due to complaints primarily relating to his shoulder, he routinely returned to work after medical treatment. In this instance, the claimant has not been able to return to work despite his expressed desire to do so.

For the above-stated reasons, I find that claimant has established all of the elements of a compensable injury. Accordingly, I dissent.

SHELBY W. TURNER, Commissioner