

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F307194

DALE W. CLARK, EMPLOYEE	CLAIMANT
COOPER TIRE & RUBBER COMPANY, A SELF INSURED EMPLOYER	RESPONDENT
CROCKETT ADJUSTMENT, CARRIER	RESPONDENT

OPINION FILED MARCH 30, 2005

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

Claimant represented by HONORABLE NELSON V. SHAW, Attorney at Law, Texarkana, Texas.

Respondent represented by HONORABLE WILLIAM G. BULLOCK, Attorney at Law, Texarkana, Texas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed June 21, 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 has failed to prove by a preponderance of the evidence that the problems he is experiencing are causally related to any incident that occurred on March 3, 2003.
4. I find that the claimant failed to prove by a preponderance of the evidence the elements necessary to establish a compensable injury under the Arkansas Workers' Compensation Law.
5. 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 finding that claimant has failed to prove by a preponderance of the evidence that the neck problems he is experiencing are related to the undisputed work incident that occurred on March 3, 2003.

I find that claimant has proved by a preponderance of the evidence the elements necessary to establish a compensable injury. Claimant testified that he experienced neck pain after being suddenly jerked forward while operating a forklift on March 3, 2003. Claimant described the onset of pain as a popping sensation in his neck followed by very sharp pain from his neck to his hand. It is undisputed that claimant immediately notified his supervisor

of this incident. Both Commission Form N and the "Supervisor's Accident or Illness Investigation Report," dated March 4, 2003, confirm claimant's testimony regarding the onset of his injury. I, therefore, find that 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.

Claimant has also shown that this injury caused physical harm established by objective findings. Specifically, an MRI performed on March 19, 2003, revealed a focal disc protrusion on the left at level C4/C5. These findings were not present in the MRI conducted in January, 2003 just months prior to claimant's work-related injury.

Finally, I find that the neck pain and injury in dispute here is not a result of claimant's previous neck problems. While claimant has had neck pain and neck surgery prior to this incident, I find that the March, 2003 MRI and Claimant's testimony, that the pain he experiences now differs from prior pain, establish that the neck pain he experienced on March 3, 2003 and following is related to his work injury.

For these reasons, I find that claimant sustained a compensable neck injury and is entitled to additional medical treatment and indemnity benefits. Accordingly, I dissent.

SHELBY W. TURNER, Commissioner