

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F213599 & F403017

RONNIE LYELL, EMPLOYEE	CLAIMANT
ALCOA ARCHITECTURAL PRODUCTS, EMPLOYER	RESPONDENT
BANKERS STANDARD INS. CO., CARRIER	RESPONDENT

**OPINION FILED NOVEMBER 30, 2005**

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

Claimant represented by HONORABLE EMILY PAUL, Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE MICHAEL E. RYBURN, 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 November 30, 2004.

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

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed in 2002 and 2003 at which time the claimant earned sufficient wages to entitle him to a compensation rate of \$425.00/\$319.00.

2. The claimant suffered a compensable neck injury on October 4, 2002 as a result of a MVA. Medical expenses and temporary total disability benefits were paid before the claimant returned to work. The respondents have paid all appropriate benefits with regard to the neck injury.

3. The claimant has failed to prove by a preponderance of the credible evidence of record that back injuries suffered on May 5, 2003 and July 17, 2003 are causally related to the compensable injury as recurrences.

4. The claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable injury to the back, caused by a specific incident, arising out of and in the course of his employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.

5. The respondents are directed to pay the court reporter's fees and expenses associated with transcribing this hearing within thirty days pursuant to Commission Rule 20.

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.

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OLAN W. REEVES, Chairman

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KAREN H. McKINNEY, Commissioner

Commissioner Turner dissents.

**DISSENTING OPINION**

The Majority is affirming and adopting an Administrative Law Judge's decision which found that the claimant is not entitled to any benefits based upon a back

injury which the claimant allegedly sustained in a prior compensable injury. Based upon my de novo review of the record, I find that the claimant suffered an injury to his upper lumbar spine in an admittedly job related motor vehicle accident on October 4, 2002, and that this injury was aggravated in a second job related incident on July 17, 2003. For that reason, I respectfully dissent from the Majority's decision.

My first disagreement with the Majority is their conclusion that the claimant did not suffer an injury to his back in the motor vehicle accident of October 4, 2002. The first doctor that the claimant saw after the motor vehicle accident was Dr. Patrick Antoon, a general practitioner in Magnolia, Arkansas. The claimant testified that when he saw Dr. Antoon, he described a pain in his neck and shoulder. This report was duly noted by Dr. Antoon in the Form 3 the doctor completed on October 8, 2002. The claimant further testified that even though his back was bothering him, he did not discuss this with the doctor since his primary focus in the initial visit was his neck. However, the claimant

testified that he advised Dr. Antoon of problems with his back when he saw him on his next visit which, according to the second Form 3, would have been on or about October 21, 2002. In the Form 3, Dr. Antoon noted the presence of muscle spasms in the claimant's thoracic spine and paresthesia in the claimant's hands and feet.

Dr. Antoon later referred the claimant to Dr. Wayne Bruffett, a Little Rock neurosurgeon. The claimant saw Dr. Bruffett on November 27, 2002. In a progress note of that date, Dr. Bruffett primarily focuses on the claimant's neck condition but the doctor also notes the presence of pain in the claimant's upper back and down into the thoracolumbar area. Dr. Bruffett did not believe that the claimant was a surgical candidate and directed him to continue undergoing conservative treatment.

The claimant continued working until an incident which occurred at his home on or about May 5, 2003. According to the claimant's testimony and the May 7<sup>th</sup> progress note of Dr. Rodney Griffin, a Texarkana physician, on May 5, 2003, the claimant picked up a small rock at his

home, was straightening up, and felt an onset of extreme pain in his lower back. The report notes that the claimant did not have any radiating pain or paresthesia. As result of this incident, the claimant missed several weeks of work for which he drew short term disability benefits under his employer's group insurance plan.

Dr. Griffin diagnosed the claimant's progress from this injury in a series of progress notes. These reports continue to refer to the claimant having pain in his lower back. There is no mention of paresthesia or radiating pain or any other symptoms of a disc injury.

The claimant was released to return to work in late June 2003. In a handwritten progress dated July 21, 2003, Dr. Griffin notes the claimant as having low back pain. However, he also mentions the claimant is having upper back pain, a complaint not previously noted. The progress note also states that the claimant had bent over while checking his load on his truck but that when he raised up, the pain became worse. In a dictated note, Dr. Griffin states that the claimant reports that he cannot drive

because of the worsening of his pain syndrome.

Significantly, Dr. Griffin also notes the presence of marked tenderness over the lumbar spine in a positive straight leg exam on the left. Both of these clinical findings were absent in Dr. Griffin's previous examination of the claimant. Following the June 21<sup>st</sup> examination, Dr. Griffin immediately directed the claimant to undergo an MRI of his back.

The MRI scan was performed on July 28, 2003. The scan discovered the presence of a disc extrusion at L3-L4 with moderate effacement and displacement of the existing nerve root. Dr. Griffin referred the claimant to Dr. Freddy Contreras, a Texarkana neurosurgeon. Dr. Contreras diagnosed the claimant as suffering from a herniated disc at L3-L4 and eventually performed surgical correction of that condition in October 2003.

I disagree with the Judge's finding that the claimant did not suffer any back injury in the automobile accident of October 4, 2002 for a number of reasons. The accident described by the claimant is the type of event

which could cause an injury to the claimant's back. Specifically, when the truck's tie-rod broke, he was thrown about the cab of the truck against his seat belt. This violent shaking admittedly injured his neck and, in my opinion, certainly could have injured the middle part of his back, the location of the claimant's herniated disc.

Any back injury the claimant sustained in the automobile accident was not as severe as it would later become. However, I believe that it is significant that the claimant described middle back pain to both Dr. Antoon and to Dr. Bruffett. Dr. Antoon mentioned in his October 21<sup>st</sup> Form 3 that the claimant was suffering from muscle spasms and pain in the thoracic region of his back. Likewise, Dr. Bruffett said that the claimant was having pain in the thoracolumbar area. I do not believe that it is any coincidence that the claimant described pain in an area very near the upper lumbar spine, where he was later found to have a herniated disc.

The claimant described a worsening of symptoms following the May 5<sup>th</sup> incident at his home. However, after

conservative treatment, he was able to return to work. As documented by Dr. Griffin's medical reports, this condition became suddenly worse after the claimant's job related incident on July 17, 2003. As noted by Dr. Griffin, the claimant's complaints of pain became worse and Dr. Griffin felt an MRI was necessary. As indicated above, these diagnostic tests discovered the presence of a herniated disc at L3-L4.

I find, the medical records establish that the claimant suffered a relatively minor injury in the upper lumbar part of his back in the 2002 motor vehicle accident. I believe that this injury was not particularly debilitating in that the claimant was able to return to work on light duty and by December 2002, had returned to full duty. It is possible the episode in May 2003 may have temporarily worsened this condition so that the claimant was forced to miss some work. However, it is incontrovertible that in July 2003, when the claimant bent over to inspect a loading tag on the items being loaded onto his truck, the symptoms the claimant suffered became much worse than in May. I find that

the incident in July 2003 was an aggravation of the claimant's preexisting condition and that he is entitled to receive benefits to the extent that his condition worsened. Specifically, temporary disability and medical treatment from Drs. Griffin and Contreras.

For the above reasons, I must respectfully dissent from the Majority's decision.

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SHELBY W. TURNER, Commissioner