

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F205391

TOMMY J. RATLIFF, EMPLOYEE	CLAIMANT
KELLOGG BROWN & ROOT, EMPLOYER	RESPONDENT
PACIFIC EMPLOYERS INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED JUNE 30, 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 JAMES C. BAKER, JR., 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 August 10, 2004.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.

3. The claimant has failed to prove by a preponderance of the evidence that the existence and extent of his alleged April 24, 2002, neck injury is established by medical evidence supported by objective findings.

4. The claimant has therefore failed to prove by a preponderance of the evidence that he sustained a compensable injury to his neck on April 24, 2002.

5. A preponderance of the evidence establishes that the claimant remained in his healing period for his compensable elbow injury until October 28, 2003.

6. A preponderance of the evidence establishes that the claimant had not returned to work as of October 28, 2003.

7. The claimant has therefore proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from May 3, 2003, through October 28, 2003.

8. The claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonably necessary in connection with a compensable injury.

9. The respondents have 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 concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

The Majority is affirming and adopting an Administrative Law Judge's decision which found that the claimant was entitled to certain additional benefits based upon a compensable injury to his arm. However, the decision

also finds that the claimant did not offer sufficient proof to establish the occurrence of a injury to his neck in the same accident. While I concur in the Majority's decision to award additional benefits based upon injuries to the claimant's arm, I respectfully dissent from the denial of the claim for benefits regarding the claimant's neck injury.

At the time of his injury, the claimant was working on some equipment at the Domtar Paper Mill. He was standing on a large paper roller which unexpectedly turned, causing him to fall and strike his head and arm on another roller.

The claimant testified that he was momentarily dazed after this accident but noticed that his elbow was bleeding profusely. He immediately reported this injury to his supervisor, who took him to the plant's first aid station. However, instead of referring the claimant to a doctor, personnel at the aid station attempted to treat the cut themselves. As a result, the cut became infected, significantly worsening the claimant's elbow injury.

As set out in A.C.A. §11-9-102, a claimant can prove a compensable injury by demonstrating that he or she suffered an accidental injury caused by a specific incident

identifiable by time and place of occurrence. The claimant must further show that the accidental injury caused internal or external physical harm to the body, that the injury arose out of and in the course of employment, and that the injury required medical services or resulted in disability or death. Lastly, the claimant must establish the nature and extent of the injury by medical evidence supported by objective findings.

The respondent argues that the claimant's herniated disc was not caused by his fall. They support this argument by pointing out that the claimant did not actually report an injury to his neck for several months after his accident. However, the reason for this is readily apparent if the facts surrounding the claimant's injury are carefully examined.

The claimant testified that his injury occurred when the roller on which he was standing began to turn and he attempted to jump from the roller onto an iron beam. According to the claimant, during this jump, he fell, cutting his left elbow and striking his head hard enough to crack his hard hat. The claimant testified,

"I'm sure the rest of my body made contact with the rest of the roller also because the next thing I knew, I was dazed for a few minutes and seeing little black spots, you know, I was kind of confused there for a moment. I didn't even realize I cut my arm until I felt something running down by my arm and I looked down and blood was just squirting out everywhere."

As the claimant's testimony makes clear, he did suffer a heavy blow to his head in the accident. However, it is not surprising that his immediate attention was focused on his arm, since it was bleeding profusely. Unfortunately, the personnel at the paper mill attempted to treat the wound themselves instead of referring the claimant to a medical facility. Consequently, the inadequate medical treatment the claimant received caused an infection and resulting complications. In the days following the injury, the claimant began experiencing a number of problems with his arm, including tingling, numbness, and pain. As the cut on the claimant's arm was described as being four or five inches wide, and became infected, it is not surprising that the claimant and his doctors attributed those symptoms to the cut rather than a possible neck injury. The claimant also testified that he began suffering from headaches

following the accident, which, once again, he did not connect with damage to his neck.

The claimant's medical providers also continued to associate his symptoms with his arm injury even though he complained of muscle spasms, as well as pain and loss of sensation in his arm. In fact, contrary to the contention that he did not report muscle spasms until several months following the injury, a medical report dated May 24, 2002, from the North Oak Hospital in Hammond, Louisiana, notes that the claimant was having spasms on that date, one month following the injury. Complaints of pain, loss of sensation, numbness, and lack of movement in his arm were reiterated time and time again in medical reports from a variety of doctors and treatment facilities. He also underwent bone scans, nerve conduction studies, EMG, and virtually every other diagnostic test one would associate with complaints of this nature to the arm. It was not until he saw Dr. Reginald Rutherford, a Little Rock neurologist on October 29, 2003, that the possibility of a neck injury was raised. Dr. Rutherford noted that there were no objective neurological abnormalities in his arm and, accordingly, recommended an MRI scan of his cervical spine. As indicated

above, that scan, which was performed on January 12, 2004, showed a herniated disc at C5-C6.

Even Dr. Rutherford, a physician who is not known for giving opinions favorable to claimants, connected many of the claimant's symptoms to his cervical disc injury. Also, as Dr. Rutherford explained, the disc herniation would explain why many of the other diagnostic tests such as EMG and nerve conduction studies performed on the claimant's arm would have been negative in that those problems were caused by his cervical condition, and not his arm injury. Dr. Rutherford also repeatedly stated that the claimant needed a neurosurgical evaluation for treatment of his neck injury.

The Majority discounts Dr. Rutherford's conclusions by finding that his opinions are not "stated with a reasonable degree of medical certainty." However, in reviewing Dr. Rutherford's deposition, I do not see how his opinions could have been any clearer. When asked if the claimant sustained a blow to the head that was severe enough to crack his hard hat would be consistent with the claimant's cervical injury, Dr. Rutherford stated that it certainly could have. Dr. Rutherford also related much of

the claimant's arm symptomology to this cervical condition which, as just indicated, Dr. Rutherford believed was connected to his job related accident.

In denying the compensability of the claimant's neck injury, I believe that the Majority is placing an impossibly high standard on the claimant. In fact, in the Judge's opinion, which the Majority is adopting, the following statement appears:

"While it is plausible - perhaps even probable - that the claimant's April 24, 2002 work injury caused the disc herniation at C5-C6, I can find the causal connection only by conjecture and speculation."

However, if it is "probable" that the claimant's cervical condition resulted from his job related accident, then the claim should be found to be compensable. The Workers' Compensation Act does not require a claimant to prove an injury to the point of absolute certainty, merely by a preponderance of the evidence. (I note with interest, given the Judge's use of the word "probable" that the Arkansas jury instructions provide that a party has proven something by a preponderance of the evidence if the proposition is

shown to be "...more probably true and accurate." See AMI202).

In this case, the claimant admittedly was injured in an accident which occurred at work on April 24, 2002. This accident resulted in physical injuries to his arm and a blow to his head that was strong enough to have broken his hard hat. The claimant has not been employed since that time and credibly testified that he has not engaged in any other activities which could have caused him to develop a herniated disc. Further, the condition has been objectively verified and a clear medical opinion establishes that the injury is the result of the symptoms which the claimant has consistently complained of since the injury to his arm occurred. To find that this condition is not the result of a job related accident is simply not in accordance with the facts presented in this case.

I believe that the evidence in this case is more than sufficient to establish that the claimant injured his neck in a job related accident on April 24, 2002. Had his neck condition been diagnosed soon after that injury, the respondent would have almost certainly have accepted the neck injury as compensable along with the elbow injury.

However, because the claimant's doctors were unable to promptly determine the cause of the claimant's symptoms, he is being denied benefits. While the mis-diagnosis in this case is understandable, given the severity of the claimant's arm injury and the possibility that his symptoms could have been caused by that injury, nonetheless, the claimant should not be penalized because his medical providers did not immediately determine the true nature of his problem.

For the reasons set out above, I respectfully dissent from the Majority's denial of benefits.

SHELBY W. TURNER, COMMISSIONER