

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F213028

JAMES E. PHILLIPS, EMPLOYEE	CLAIMANT
MATRIX SERVICE CO., EMPLOYER	RESPONDENT
ZURICH INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED MAY 31, 2005

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

Claimant represented by HONORABLE F. MATTISON THOMAS, III, Attorney at Law, El Dorado, Arkansas.

Respondent represented by HONORABLE CAROL WORLEY, 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 September 30, 2003.

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

1. The stipulations agreed to by the parties at the prehearing telephone conference conducted on June 16, 2003, and contained in the Prehearing Order filed that same date are hereby accepted as fact.
2. Claimant fell as he was coming out of the man-hole on September 24, 2002, and

injured his right shoulder and right chest wall.

3. Claimant was examined in the emergency room on September 24, 2002, and he did not complain of an injury to his right hip or his lower back.

4. Claimant was released to return to work by the emergency room personnel.

5. Claimant continued to work for respondent after this trip and fall incident.

6. After being off work the weekend of September 28th and 29th, claimant presented to the emergency room on Monday September 30, 2002, with complaints of lower back pain.

7. Claimant has failed to prove by a preponderance of the evidence that he sustained an injury to his lower back on September 24, 2002, which arose out of and in the course of his employment, is supported by objective medical findings and which caused internal or external harm to the body.

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

MIKE WILSON, Special Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

The Majority is affirming a decision by an Administrative Law Judge holding that the claimant could not establish that his low back injury was related to an admittedly job related fall. For the reasons set out below, I respectfully dissent from that decision.

The Administrative Law Judge, whose Opinion the Majority is adopting, concluded that the claimant could not establish that his back injury occurred as a result of his September 24, 2002 fall. The Judge reached that conclusion based upon her doubt as to the claimant's credibility when he testified that he struck his hip and buttocks in the fall, and because his back pain did not begin until the Monday morning following his accident. She also noted that he had a preexisting history of back problems and found that the claimant had failed to meet his burden of proof. However, I find that the Administrative Law Judge misconstrued the facts in this case and reached an erroneous result.

The Majority questions how the claimant could have injured his back in the September 24, 2002 fall. However, it is undisputed that the claimant fell heavily to the ground on the date in question. The respondent contends that because the claimant initially told the emergency room staff that he struck his shoulder, chest, and ribs, he could not have injured his back. However, it is difficult to imagine how someone could fall and land on their shoulder and not also land on their hips and lower body. I also note that the

claimant told Dr. Edwards in the emergency room that he fell on his "right side," and, in a recorded statement to the respondent's adjuster, described his landing from the fall as hitting his "right side and everything." I believe that the "and everything" is not merely a figure of speech but a descriptive term indicating that the claimant fell and landed on the entire right side of his body. That is a much more logical conclusion than trying to imagine him landing and striking only his shoulder with his lower body not striking the ground as well.

It is also not unusual that the claimant did not begin suffering significant back pain until a short period of time after the fall. In fact, contrary to the assertion that the claimant did not report back pain until the Monday following the fall, an emergency room noted dated September 30, 2002, states that he had soreness all weekend with an increasing pain level. This is significant since the claimant had only worked one day of light duty since his fall the proceeding Tuesday. The claimant's back pain had clearly begun developing shortly after the fall and continued to increase to the point until he was no longer able to work. The respondent also points to the claimant's

past medical history as an indication that his current problem is somehow unrelated to his job related fall. However, the claimant testified that this prior back injury occurred some 18 years ago. In the intervening period, he continued to be employed as a welder in a variety of large construction projects. Since this type of activity involved strenuous physical labor as well as bending, stooping, lifting, and related activities, his prior back injury clearly had fully resolved. Also, since there is no medical evidence in the record regarding this original injury, any conclusion based upon this prior injury is little more than speculation and conjecture, something which the Commission is forbidden by the Workers' Compensation Act to rely upon.

In reviewing the record in this case, it appears to me that the following facts are not in dispute. The claimant suffered a fall while performing his job related duties on September 24, 2002. As a result of this fall, the claimant landed heavily on the ground, striking the right side of his body. The claimant sought immediate medical attention as a result of this fall and only worked one day of light duty following the injury. Within a few days of the accident, which occurred on a Tuesday, he began suffering

from significant back pain and related radicular symptoms. These problems required the claimant to seek medical attention on the following Monday and the presence of these symptoms were noted by the emergency room staff. After returning to his home in North Carolina, the claimant came under the treatment of a doctor specializing in spinal injuries who diagnosed him, based upon objective factors, of having a ruptured disc at L4-L5.

Based upon the above, it is apparent to me that the claimant must have sustained an injury to his lower back in his job related accident. Any other conclusion illogical. For those reasons, I would reverse the Administrative Law Judge and find that the claimant did suffer a compensable injury to his lower back on September 24, 2002.

SHELBY W. TURNER, Commissioner