

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F211719

DENNIS WATSON, EMPLOYEE	CLAIMANT
SOUTHERN TRANSIT, INC., EMPLOYER	RESPONDENT NO. 1
ARKANSAS TRUCKING ASSOCIATION, SELF-INSURED FUND	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED AUGUST 18, 2005

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

Claimant represented by HONORABLE MICHAEL HAMBY, Attorney at Law, Greenwood, Arkansas.

Respondent No. 1 represented by HONORABLE MARK McCARTY, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by HONORABLE DAVID PAKE, 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 23, 2004.

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

1. The parties' stipulation that claimant suffered a compensable injury to his left foot on October 6, 2002 is hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage of \$560.13 which would entitle him to compensation at the rate of \$373.00 for temporary total disability benefits and \$280.00 for permanent partial disability benefits is also hereby accepted as fact.

3. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his back on October 6, 2002.

4. Claimant has met his burden of proving by a preponderance of the evidence that his back problems in February 2003 are a compensable consequence of the October 6, 2002 injury.

5. Respondent is liable for any unpaid reasonable and necessary medical treatment provided in connection with claimant's compensable back injury.

6. Claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability benefits for his compensable injury.

7. Claimant has failed to prove by a preponderance of the evidence that he has suffered any permanent impairment as a result of his compensable injuries. Having failed to prove that he suffered permanent impairment, claimant is not entitled to wage loss benefits.

8. The Second Injury Fund has no liability in this claim.

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

The claimant suffered an admittedly compensable injury to his left foot on October 6, 2002. At the time of this injury, the claimant was employed as a truck driver and was performing some service on his rig when he fell. The present dispute does not concern the claimant's foot injury but is a claim for additional benefits based upon an injury to his lower back. In asserting that he is entitled to benefits for his back condition, the claimant argues that he either injured his back in the original fall in October 2002, or that his back was injured in February 2003 when he sustained a fall at his home while on crutches attempting to navigate some stairs. As a result of this back condition, the claimant contends that he is entitled to additional medical benefits and permanent impairment in the amount of 7% to his body as a whole, as well as related wage-loss disability benefits. Because of his extensive past history of back injuries and service-related psychological and physical injuries, the Second Injury Fund is also a party to this claim.

In an Opinion dated November 23, 2004, an Administrative Law Judge found that the claimant did not establish that he injured his lower back in the fall of October 2002. However, the Judge did find that the claimant established that he sustained an injury to his lower back in February 2003, which was a compensable consequence of his compensable foot injury. Neither of the respondents appealed that portion of the Judge's decision.

However, the Judge further found that the claimant could not establish that the 7% impairment assessed by Dr. Luke Knox, a Fayetteville neurosurgeon was the result of his compensable back injury. From that decision, the claimant filed the present appeal. In my opinion, the claimant met his burden of proof and should be awarded the appropriate benefits.

At Dr. Knox's direction, the claimant underwent a CT/myelogram of his lumbar spine. That report found that there was a minimal left paracentral disc protrusion causing flattening of the anterior thecal sac at L4-L5. This is clearly an objective finding sufficient to base an impairment rating.

In a letter dated May 20, 2004, Dr. Knox stated that, based upon his review of the CT/myelogram, he felt the claimant was entitled to a 7% impairment to the body as a whole based upon the AMA Guides to the Evaluation of Permanent Impairment. In rejecting Dr. Knox's opinion, the Administrative Law Judge noted that Dr. Claude Martimbeau, a Fort Smith orthopedist, had opined that the claimant did not have any permanent impairment as a result of his back injury. The Law Judge, noting that Dr. Martimbeau had been the claimant's primary treating physician, held that the opinion of Dr. Martimbeau carried greater weight. However, I note that Dr. Martimbeau did not have the advantage of the diagnostic testing performed at Dr. Knox's direction. I find that Dr. Knox, because of his access to better diagnostic information, was in a better position to evaluate the extent of the claimant's impairment and his opinion should, therefore, be the basis for awarding the claimant his requested benefits.

SHELBY W. TURNER, Commissioner