

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F506893

GERRY ALCORN,
EMPLOYEE

CLAIMANT

CARL LEE MITCHELL,
EMPLOYER

RESPONDENT

UNION INSURANCE COMPANY,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED JUNE 29, 2006

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

Claimant represented by the HONORABLE MARVIN "CHIP"
LEIBOVICH, JR., Attorney at Law, Bryant, Arkansas.

Respondents represented by the HONORABLE GAIL PONDER
GAINES, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed March 2, 2006. In said
order, the Administrative Law Judge made the following
findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation
Commission has jurisdiction over this claim.
2. The stipulations of the parties are hereby
accepted as fact.
3. At the time of claimant's injury, he was
earning \$9.00 per hour. Based upon a full-
time work week, the claimant's average weekly
wage would have been \$360.00, entitling him to

a compensation rate of \$240.00 per week in the event his claim was found compensable.

4. The claimant has failed to prove, by a preponderance of the evidence, that he sustained a compensable injury within the meaning of the Arkansas workers' compensation laws. Specifically, a preponderance of the evidence fails to reflect that the claimant was not (sic) performing employment services at the time of his fall and resulting injury.

5. It is undisputed, as reflected by a blood analysis taken immediately following the claimant's injury, that illegal drugs had been ingested by the claimant. The claimant failed to overcome the rebuttable presumption that his injury was substantially occasioned by the use of illegal drugs as provided in Ark. Code Ann. § 11-9-102(4)(B)(iv).

We note that in finding No. 4 the Administrative Law Judge actually found the claimant failed to show that he was performing employment services at the time of his injury.

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.

The claimant alleges that he sustained a compensable injury that is governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injury is, indeed, an injury that is covered by the Act; however, the claimant has failed to establish the elements necessary to prove a compensable injury by a preponderance of the evidence.

Therefore we affirm and adopt the March 2, 2006 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.