

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F211699

RUSSELL BREWER, EMPLOYEE	CLAIMANT
WAL-MART ASSOCIATES, INC., A SELF-INSURED EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, INC., TPA	RESPONDENT

OPINION FILED APRIL 19, 2006

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

Claimant represented by HONORABLE WESLEY COTTRELL, Attorney at Law, Rogers, Arkansas.

Respondent represented by HONORABLE TOD BASSETT, Attorney at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal the decision by the Administrative Law Judge finding that the claimant proved by a preponderance of the evidence that he was entitled to additional medical treatment. Based upon our de novo review of the record, we find that the claimant has failed to meet his burden of proof. Accordingly, we reverse the decision of the Administrative Law Judge.

The claimant began working for the respondent employer as an over-the-road truck driver in July of 1987. The claimant testified that on September 11, 2002, he was in the process of hooking a loaded trailer to his tractor using the crank when it slipped out of gear and jerked his right shoulder, causing him to have pain. The claimant explained that it was more his right shoulder blade into his back. Following this incident, the next morning his pain had progressed to where he couldn't breathe and his pain was from his shoulder blades up into his neck and into his shoulders. The claimant was seen by the nurse practitioner in Dr. Moffitt's office on September 13, 2002, where he mentioned that he was having neck pain. On September 26, 2002, when he saw Dr. Moffitt, the claimant complained of right shoulder and neck pain . Dr. Moffitt ordered an MRI of the claimant's neck and shoulder. The claimant testified that the pain just continued to progress and it even began to move into his arms. Dr. Moffitt continued to treat the claimant until he was released on December 27, 2002, to return to work.

The claimant testified that he returned to work even though he did not feel like going back. The claimant ultimately sought treatment from Dr. Knox and Dr. Hall. The claimant returned to the Arkansas Occupational Health Clinic and saw Dr. Berestnev for his shoulder and neck problems. The claimant underwent another MRI of his neck and shoulder. In March of 2004, Dr. Knox did surgery on the claimant's neck at the C6 and C7 level. The claimant agreed that after his neck surgery and release by Dr. Knox he continued to be seen by Dr. Hall and Dr. Tucker in order to receive his medications.

The claimant last worked for the respondent employer in March of 2004. He is currently not drawing social security but his case is on appeal. The claimant testified that he is not physically able to return to truck driving.

The claimant took a medical leave of absence from the respondent employer around November 3, 2003. In March of 2004, the claimant voluntarily terminated his employment with the respondent employer in order to draw his profit

sharing. The claimant testified that his medical bills have been paid by the respondent except for his co-pay and deductibles. The claimant testified that following his surgery some of the major pressure was relieved in his back but he still has aches and pains. The claimant testified that he has pain which radiates down from his neck to the middle of his back.

The evidence demonstrates that the claimant has had low back and middle back pain off and on for the past seventeen years. The claimant has also had several workers' compensation claims, all of them involving his back and neck. The claimant was in a truck wreck on July 15, 2001, when his 18-wheeler hit a concrete abutment on a bridge and ended up going into a bar ditch. The claimant stated that during this process of hitting the bridge, although he couldn't remember exactly what all went on, it was a jarring experience. The claimant remembers that his neck got very sore after this incident. When the claimant was asked about the medical records, he agreed that if the medical documentation said that he had a prior neck claim, he was

sure that he had. In March of 2002, when he was laying down, the claimant's arms went asleep. The claimant went to a doctor to find out what the reason for this problem was but he testified that it never happened again.

In the present claim, the claimant testified that on September 11, 2002, when he was cranking down the fifth wheel and it slipped out of gear, he felt a pull and pressure in his right shoulder blade area. The claimant testified that after a short period of time this discomfort subsided but did not go away completely and it was really bad the next morning. The claimant explained that the reason he did not report his injury on September 11th was because he hoped that the problem would work itself out. He stated that when he woke up the next morning he could hardly breath and felt like he needed to do something. The claimant was first seen at the Lowell Clinic by the nurse practitioner, Max Beasley, where he reported he had problems with his right shoulder. Dr. Moffitt ultimately released the claimant to return to work on December 27, 2002, and he worked for the respondent employer for the next seven months. The

claimant returned to Dr. Moffitt on August 1, 2003, where he reported a lot of neck pain and pain going down into his arms. The claimant also agreed that eight months before his initial focus or complaint was more on his right shoulder, not his neck.

The medical records set forth that the claimant underwent tests of his cervical spine on October 13, 2001, which were unremarkable and it was noted that the intervertebral disc spaces are preserved as were the posterior elements. Nurse Beasley wrote on September 13, 2002, that the claimant reported that on September 11, 2002, he was cranking a trailer down when the crank jerked his right shoulder causing him to have pain in the right shoulder. Nurse Beasley noted that the claimant denied any neck pain or any paresthesias down either of his arms. Nurse Beasley wrote that the claimant has decreased range of motion of his neck and he noted that there was some swelling and some spasm present over the claimant's right rhomboid and trapezoids area. It is further noted that the x-rays taken of the claimant's cervical and thoracic spine revealed

some bone spurring at C5-C6. The claimant was diagnosed with having right shoulder strain and medications and exercises were recommended as well as to return to work but to restrict the use of his right arm.

Dr. Moffitt wrote on September 20, 2002, that he had rechecked the claimant's shoulder strain and he was much better. Dr. Moffitt saw the claimant again on September 26, 2002, and wrote that the claimant's problems with his right shoulder strain were persisting. After examination Dr. Moffitt recommended that the claimant undergo physical therapy, not return to work for two weeks and to limit his lifting to 20 pounds, as well as not to work with his arms above chest level. The physical therapist's notes on October 8, 2002, October 11, 2002, and October 15, 2002, indicated that there were problems with the claimant's cervical spine, and neck. The physical therapist, Jon Lee, on October 18, 2002, wrote that the claimant had seen Dr. Moffitt that day and mentioned his cervical spine pain for which Dr. Moffitt recommended one more week of physical therapy.

On October 25, 2002, Dr. Moffitt wrote that the claimant reported that he was not getting any better and was still complaining of pain along the posterior aspect of his shoulder in the intrascapular area and having numbness and pain going down into his arms. Dr. Moffitt recommended an MRI of the claimant's neck and shoulder. In a note dated November 1, 2002, Dr. Moffitt reviewed the claimant's neck and shoulder MRI's and stated that his shoulder and neck were normal. Dr. Moffitt thought that the claimant had a muscular problem and that he should exercise and go through therapy. On November 8, 2002, Dr. Moffitt recommended that the claimant continue with his therapy for one more week although doubting it would make any difference in the claimant's condition. Dr. Moffitt saw the claimant on November 29th as well as on December 13, 2002, for his right shoulder problems at which time the claimant also complained of elbow problems. Dr. Moffitt prescribed some anti-inflammatory medications as well as home exercises. On December 27, 2002, Dr. Moffitt wrote that the claimant was reporting pain in his elbows which he has had for a long

time. The claimant reports that the right elbow was worse since his injury of September 11, 2002. However, his left side was hurting prior to that and was not affected by the injury. Dr. Moffitt released the claimant to work with no restrictions and no permanent impairment as well as no return appointment.

The claimant was seen by Dr. Berestnev on August 1, 2003, where it was noted that he has been treated for a right shoulder strain and neck and thoracic pain since his injury of September 11, 2002. The doctor noted that the claimant continued to hurt in his neck reporting a burning sensation in his neck that radiated into both arms. Dr. Berestnev noted that the claimant had an MRI in October of 2002, which showed a mild broad based central right paracentral disc protrusion at C6-7, but he did not think that this disc protrusion was responsible for the claimant's symptoms. The doctor recommended an MRI of the claimant's neck as well as modified his medications. The claimant underwent a MRI of his cervical spine on August 8, 2003, which revealed straightening of the normal cervical

lordosis. Dr. Berestnev wrote on August 15, 2003, that he had reviewed the claimant's recent MRI and compared it with his October of 2002 MRI, and there did not appear to be any progression in his disease. Dr. Berestnev talked at length about the results of the claimant's MRI ultimately stating that he has degenerative changes in his cervical spine. The doctor told the claimant that most likely his pain was in the trapezius area and the burning sensation was due to muscle fatigue. The doctor recommended medications.

On October 27, 2003, the claimant sought treatment from Dr. Luke Knox. Dr. Knox saw the claimant for complaints of neck pain and mid thoracic discomfort. Dr. Knox wrote that the claimant had marked paraspinal muscle spasms with marked list of the cervical spine to the right as well as muscle spasm of the right rhomboid. Dr. Knox reviewed the claimant's MRI from 2002, and noted that it showed significant disc herniation at C6-7, narrowing the channel down to 7 millimeters. Dr. Knox recommended that the claimant undergo another MRI of his thoracic spine to make certain there was nothing lower down in his spine causing

him problems. Dr. Knox also recommended an injection at C6-7. If the injection gave a positive result he would recommend the claimant as a candidate for cervical discectomy and fusion. Dr. Knox noted that "normally, I would not recommend surgical options, however, in the face of the rather pronounced findings of his MRI scans, I would be inclined to recommend that he consider having these spinal channel dimensions re-established." The medical records set forth that Dr. Knox recommended that the claimant be off work from November 5, 2003, up to his back surgery which was on March 4, 2004.

Dr. Knox wrote on April 1, 2004, that the claimant was one month status post surgery and his x-rays showed stable alignment. The doctor noted that the claimant still had some aches and pains but he was going to start the claimant in a physical therapy regime. The x-rays taken on April 1, 2004, set forth that the claimant was status post anterior cervical discectomy and fusion at C6-C7 with intact hardware, plates, and screws. The claimant underwent a bone imaging test on his low back on March 4, 2004, which

indicated that he had increased activity in the region of the left L2-L3 facet joint and in the region of the right L4-L5 facet joint. The doctor noted that this was most likely due to osteoarthritis.

In a letter dated September 22, 2004, Dr. Knox noted that the claimant had not related his complaints to an injury at work. Dr. Knox further stated that when he first saw the claimant on October 27, 2003, the claimant provided a history of neck pain of the previous three months. Further, Dr. Knox stated, "I do not see that there was a specific traumatic injury that led to the treatment and ultimate surgery of Mr. Brewer."

The claimant's earlier medical records set forth that on December 2, 1994, the claimant had complaints of pain and stiffness in his back, which he attributed to a new seat in his truck. Again, in 1996, the claimant was complaining of chronic low back pain mentioning that he was a truck driver and had had chiropractic treatment for his back discomfort. On July 31, 2001, the claimant was seen with back spasms and pain having experienced a motor vehicle

accident one week earlier. The claimant continued to be seen for his complaints of back and neck strain describing his neck pain as being in both sides of his neck and down his back into his shoulder blades. On August 15, 2001, the claimant reported that sometimes it caused a burning sensation on his left side and with movement he gets a ringing in his left ear. The medical records set forth that the claimant continued to be seen or followed by Dr. Smith and Dr. Thompson up and through September 1, 2001, for problems resulting from his July 2001 motor vehicle accident.

Ark. Code Ann. §11-9-102(4) (A) (i) (Repl. 2002) defines "compensable injury" as "[a]n accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is 'accidental' only if it is caused by a specific incident and is identifiable by time and place of occurrence." Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002). Under the statute, for an

accidental injury to be compensable, the claimant must show that he sustained an accidental injury; that it caused internal or external physical injury 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. Id. Additionally, the claimant must establish a compensable injury by medical evidence, supported by objective findings as defined in §11-9-102(16). Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000). The injured party bears the burden of proof in establishing entitlement to benefits under the Workers' Compensation Act and must sustain that burden by a preponderance of the evidence. See Ark. Code Ann. § 11-9-102(4)(E)(i)(Repl. 2002); Clardy v. Medi-Homes LTC Servs., 75 Ark. App. 156, 55 S.W.3d 791 (2001).

The claimant's medical records clearly demonstrate that the claimant had progressive degeneration of his neck and back. The claimant began having pain and numbness in his

back, neck and arms as early as mid-1985. This is two years before he started his employment with the respondent employer. At the hearing, the claimant admitted that he had suffered from back pain for the last seventeen years. He also stated that he had required chiropractic adjustments to his spine. He stated that over the years he would get a stiff neck and kept driving, treating himself with over-the-counter medications. The record demonstrates that the claimant was seen for stiffness in his neck, pressure, numbness and pain, in 1991, 1994, 1996, 1999, and 2000.

In July 2001, Mr. Brewer was involved in a motor vehicle accident in which he repeatedly injured his neck. He experienced pain and spasms as a result of that accident, and was diagnosed with a sprain to his cervical spine. After he ceased physical therapy reporting that he no longer needed medical care, he continued to have spasms and pain. No MRI was taken at that time, so there is no way to know the extent of damage the repeated jarring caused.

The claimant pointed to the x-rays taken on October 13, 2001, as showing no abnormalities of the spine.

However, the claimant was seen in the emergency room at the time for a broken ankle caused by falling out of a tree. The records that the claimant refers to were x-rays verifying no fractures or dislocations caused by the immediate trauma. The technicians reading the x-rays were not looking for degenerative changes and would not have reported them. Therefore, those x-rays are completely irrelevant to the present case. Furthermore, Dr. Gary Moffitt interpreted x-rays taken of the claimant's cervical spine on September 13, 2001, as showing degenerative changes at the C6-7 level. A later set of cervical and thoracic x-rays were taken and interpreted by claimant's own personal physician on July 18, 2003, and they likewise revealed degenerative disc disease. We would note that degenerative changes do not occur overnight, but take years to form. Furthermore, comparing x-rays to an MRI scan is like comparing "apples and oranges." Although both of these tests are generally described as radiographic studies, they each show different types of things.

After September 22, 2002, the claimant was treated for a shoulder strain. He told Nurse Beasley that he did not have any neck pain, and despite the recent automobile accident, denied any previous injuries to his neck and shoulder. The records at that time indicate degenerative changes. The claimant was released with no restrictions to return to work.

Eventually, the symptoms associated with claimant's shoulder went away; what remained was the same pain, spasm and numbness he had been having for years. In fact, the claimant admitted that the pain in his arms existed long before the accident.

The claimant then worked for seven months without incident before revisiting the doctor with the same symptoms of back and neck pain, and numbness. During that seven month period of time, the claimant was given a commercial driving fitness exam in which he reported no pain in his back or neck. If the claimant's injuries from the crank accident had not healed, then the claimant would have reported some discomfort at that DOT examination. Since the claimant

stated he was free from pain, one can only assume that any injury sustained in September of 2002 had sufficiently and fully healed at that point. In fact, the claimant never again complained of pain in his right shoulder.

In August of 2003, Dr. Hall diagnosed the claimant as having degenerative joint disease. The second MRI performed on August 8, 2003, showed extensive problems resulting in narrowing of the cervical space to 7mm. Dr. Berestnev noted that "[a]ll of the changes are degenerative."

Clearly, the claimant's symptoms all point to degenerative disease as the medical records reflect he experienced all of these symptoms long before his July 2001 injury, and HE continued to experience them long after the pain in his shoulder dissipated. Furthermore, Dr. Hall, Dr. Berestnev, Nurse Beasley and Dr. Knox all diagnosed the claimant with degenerative disc disease. None of the physicians that examined the claimant concluded that his back and neck pain were a result of the 2002 accident.

Furthermore, all of the claimant's treating physicians came to the same conclusion - that the claimant's problems were not severe enough to be causing the type of pain complaints that the claimant had been expressing. Dr. Berestnev reviewed both MRI Scans and opined that there had been no progression of the claimant's degenerative disc disease between the two dates of the two scans in October of 2002 and August of 2003. Dr. Berestnev noted the same "small" midline disc protrusion at the C6-7 level that Dr. Knox later identified. The interpreting radiologist of the second MRI scan along with Dr. Berestnev also specifically mentioned the existence of some "ventral boney ridging" which, combined with the small midline disc protrusion, had caused the diameter of the claimant's spinal canal to be minimally reduced to the AP dimension of 7mm. Significantly, there was no lateral extension of the protrusion to produce nerve root entrapment at that level. Furthermore, there was no other demonstration of transligamentous HNP or a disc fragment. Again, significantly, Dr. Berestnev opined that all of the changes

appearing on the second MRI scan were degenerative in nature with no acute findings.

The medical records clearly indicate that the claimant had experienced problems with his neck for many years prior to the date of the incident in question. As stated above, Dr. Knox commented in his October 27, 2003, report that normally he would not recommend surgical options on the type of findings present on the claimant's MRI scans. Dr. Knox's operative note is quite revealing as he performed more than just an anterior cervical disectomy. He also performed a partial foraminal corpectomy, which is typically done when cervical stenosis is present caused by bone spurs (osteophytes).

Significantly, the claimant did not associate the symptomology he was experiencing to his work injury of September 11, 2002, when he provided the history to Dr. Knox, a physician that the claimant specifically sought out and consulted on his own. Dr. Knox eventually operated on the claimant's degenerative disc disease in order to reestablish the appropriate spinal canal dimensions that had

been reduced over the years through the progressive disease. It is significant that the claimant did not do well following the surgery. The claimant's subjective complaints did not subside at all.

Therefore, based upon our de novo review of the record, we find that the claimant has failed to meet his burden of proof that he is entitled to additional medical treatment. Accordingly, we reverse the decision of the Administrative Law Judge.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

The claimant was involved in an admittedly job-related accident on September 11, 2002. The present dispute in this case concerns the extent of the injuries sustained

in that accident. The respondent contends that the claimant sustained nothing more serious than a shoulder strain. However, the claimant asserts that in addition to injuring his shoulder, he suffered a much more serious injury to his neck which eventually required him to undergo a cervical fusion.

After a hearing, an Administrative Law Judge found that the claimant had met his burden of establishing a compensable injury to his neck as a result of his accident of September 11, 2002, and awarded him appropriate medical and disability benefits. From that decision, the respondent filed the present appeal.

The Majority reverses the Administrative Law Judge's decision and finds the claimant did not meet his burden of establishing a job-related injury to his neck. However based upon my de novo review of the evidence, I find that the Administrative Law Judge's decision was correct in all respects and should be affirmed and adopted. Accordingly, I must respectfully dissent from the Majority opinion.

The claimant testified that, at the time of his injury, he was a long haul truck driver for the respondent. According to him, while attempting to unhook his trailer, he was turning a crank when he felt a pain in his shoulder. He continued to work and did not immediately report the injury. However, he stated that early the next morning he awoke with breathing difficulties from the pain and stiffness in his shoulder and upper back. On September 12, 2002, he notified his employer of the injury and they referred him to the Arkansas Occupational Health Clinic for treatment.

The claimant was seen at this facility on September 13, 2002, where he spoke with Mr. Max Beasley, a nurse practitioner. According to his medical report of that date, the claimant advised Mr. Beasley that he injured his shoulder while cranking down his trailer. The report further notes that the claimant was not having neck pain or paresthesia in his arms but was having right shoulder pain. According to this report, Mr. Beasley noted the presence of muscle spasms and swelling in the claimant's rhomboid and trapezius area. Mr. Beasley also recommended that the

claimant take Vioxx and apply moist heat to his shoulder and neck, three times a day until a recheck in a week.

On September 20, 2002, the claimant returned to the clinic where he was seen by Dr. Gary Moffit, the respondent's company physician. Dr. Moffit noted that the claimant's shoulder strain was doing better and Dr. Moffit then released the claimant to return to work at full duty.

On September 26, 2002, the claimant returned to Dr. Moffit complaining about significant problems in his right shoulder and describing problems turning his neck so that he was not able to drive. At that time, Dr. Moffit placed the claimant under a work restriction and directed him to begin physical therapy.

Because of the claimant's continued complaints, Dr. Moffit eventually directed the claimant to undergo an MRI scan of his neck. While the record does not contain a report relating to that MRI scan, Dr. Moffit, in a letter dated November 1, 2002, characterized the MRI of the claimant's neck and shoulder as being "almost completely normal." The doctor continued the claimant under his work

restrictions and directed that he undergo more physical therapy. In another report dated December 27, 2002, Dr. Moffit opined that the claimant was "doing so well" that he could return to work with no restrictions. Dr. Moffit further stated that there was no permanent impairment and claimant did not need to return for a follow-up appointment.

The claimant returned to work and began carrying out his duties the best that he could. However, he continued to have problems with pain and stiffness in his neck and upper back area. Consequently, he returned to the Arkansas Occupational Health Clinic in August 2003 and was seen by Dr. Moffit's associate, Dr. Konstantin Berestnev. In a report dated August 1, 2003, Dr. Berestnev reviewed the claimant's past condition and noted that he had undergone an MRI of his neck in October 2002. Dr. Berestnev stated that the MRI revealed a broad based central right paracentral disc protrusion at C6-C7 (this is apparently the same MRI scan that Dr. Moffit characterized as normal). Dr. Berestnev also mentioned the claimant's complaints of a burning sensation in his neck which radiated into his fingers and

hands. The doctor attributed these problems to a postural fatigue. He did, however, direct the claimant to undergo a second MRI scan to determine the status of his neck problem. The second MRI scan was performed on August 8, 2003 and in a report of that date, the radiologist explained that the claimant had a focal extradural defect in the midline at C6-C7 which effaced the cord and narrowed the spinal canal.

Dr. Berestnev evaluated and explained the MRI findings in a report dated August 15, 2003. In that report, the doctor stated that there were no "acute findings" and that he explained to the claimant that there was "no progression of his disease." Dr. Berestnev concluded that the claimant would benefit from further physical therapy specifically including "a learning session on the posture."

When the claimant did not obtain any relief from the treatment plan promulgated by Dr. Berestnev, he sought treatment from his personal physician, Dr. Billy Hall, of Gravette, Arkansas. Dr. Hall referred the claimant to Dr. Luke Knox, a Fayetteville neurosurgeon.

Dr. Knox saw the claimant in October 2003 and set out his findings of that examination in a letter dated October 27, 2003. Dr. Knox had a much different evaluation of the MRI scan of the claimant's cervical spine than his previous doctors. Dr. Knox, after reviewing the claimant's two MRI scans, noted that they "indeed showed significant disc herniation at C6-C7." He also stated that he was "quite concerned about the nature of Russell's disc herniation." Also, contrary to the belief of Dr. Berestnev that spinal injections were of no value, he directed the claimant to see another physician for a bilateral facet injection at C6 and C7. Dr. Knox was hopeful that this would relieve some of the claimant's discomfort. Dr. Knox concluded his report by stating that he normally did not recommend surgical options but, because of the "pronounced findings of his MRI scans," he would be inclined to recommend surgery. Dr. Knox later performed a spinal fusion at C6-C7 on March 5, 2004. The claimant testified that while he still had some aches and pains, many of his problems resolved following his surgery.

In denying compensability for any medical or disability benefits related to the claimant's cervical condition, the Majority argues that the job-related accident of September 11, 2002 did not cause any significant damage to the claimant's cervical spine. Instead, they contend that the condition treated by Dr. Knox was the result of a long standing degenerative disc disease and that the herniation treated by Dr. Knox was merely the result of the claimant's long-standing condition. However, my review of the medical records do not support that contention.

The evidentiary record contains medical reports from the claimant's personal physician for many years prior to his 2002 injury. The Majority argues that these reports support their contention that the claimant had long-standing neck problems and that his disc herniation preexisted his job-related accident. However, my review of these reports leads me to the opposite conclusion.

The first mention of any neck problems is in a note dated August 9, 1985, which refers to "pain in cervical spine." The records do not contain another reference to neck

problems for over nine years. In December 1994, while being treated for contact dermatitis, the claimant mentioned to his doctor that he was having pain and stiffness in his neck. In neither case does it appear that the doctor prescribed any medication or any other treatment for these complaints.

After another six years, the claimant once again reported problems with his neck to his treating doctors. This complaint was associated with a job-related accident the claimant suffered in July 2001 when his truck struck a guard rail and ran into a ditch. The claimant received some physical therapy for his neck condition and, a short time later, was released to return to work with no restrictions. The claimant returned to work and continued carrying out his job duties without restrictions or limitations for another year before he sustained the injury upon which this current claim is based.

Contrary to the assertion by the Majority, I do not think that the claimant's two complaints of neck pain and stiffness are sufficient to show evidence of a long-

standing neck problem. The doctor's notes from 1985 and 1994 indicate nothing more than transient neck pain for which the claimant did not receive any apparent treatment. Further, the claimant continued to carry out his job duties during this period with no restrictions or limitations placed upon him because of his alleged neck condition. While it is obvious that the job-related accident in July 2001 was of a more serious nature, the claimant nonetheless received no treatment more extensive than physical therapy and massages. The claimant responded well to this treatment and returned to work without restrictions or problems.

While it is true the claimant initially complained of shoulder pain when he reported his injury in September 2002, he was soon complaining of pain in his neck and radicular symptoms. With the type of injury the claimant sustained, which Dr. Knox referred to as a significant herniation, it is not surprising that the pain first manifested itself in a radicular manner. Radiating pain, numbness in arms and fingers, and burning sensations in the neck and upper back are all classic symptoms of cervical

disc herniations. Further, the claimant's job-related activity at the time he had the onset of pain is unquestionably the sort of conduct which can cause injuries to the neck. That is, rapidly turning a crank under strain using his arms or upper body. I also think it is significant that within a few weeks of this injury, the claimant's complaints were centered primarily upon his neck and related symptoms.

In arguing that there was no acute or traumatic injury which brought about the claimant's problems, the Majority is relying upon the opinions of Drs. Moffit and Berestnev and "nurse" Beasley. However, I find that very little weight, if any, should be afforded to the opinions of those medical providers. In the first place, Mr. Beasley is not a physician and is certainly not qualified to opine on a diagnosis involving spinal injuries. Also, Dr. Moffit demonstrated he has little understanding of the nature of spinal injuries when he stated that the claimant's October 2002 MRI was "almost completely normal." This is the same MRI which, when reviewed by Dr. Knox, a Board certified

neurosurgeon, was described as evidencing a "significant disc herniation." Even Dr. Moffit's associate, Dr. Berestnev, was of the opinion that the MRI demonstrated a disc herniation. While he was able to recognize a herniated disc as being abnormal, Dr. Berestnev evidenced an inability to correctly evaluate the claimant's spinal condition when he concluded that the MRI did not indicate a possible cause of the claimant's radicular symptoms. Instead, Dr. Berestnev believed that the symptomology was because the claimant had a posture problem from the way he sat in his truck.

In their brief, the respondent makes the assertion that Dr. Knox reached the same conclusion in regard to the MRI scan as did Drs. Moffit and Berestnev. This is a surprising argument considering that Dr. Knox thought that the claimant had significant disc herniation which caused him to recommend surgery, contrary to his usual practice, the other two doctors did not seem to think that the MRI caused any significant problems. The fact of the matter is that Dr. Moffit obviously did not understand the nature and extent of the injury demonstrated by the MRI scan and, while

Dr. Berestnev had a more accurate reading of the scans, he likewise failed to appreciate the significance of the claimant's injury.

In my opinion, the Majority and the respondents are trying to conflate the opinions of Dr. Knox with that of Dr. Moffit and Dr. Berestnev because, on their own, the latter two opinions are clearly unreliable. If the opinions of Drs. Moffit and Berestnev (not to mention that of Mr. Beasley) are discounted because of their lack of expertise, it is apparent that the Majority is relying on nothing more than speculation and conjecture in their assertion that the claimant had a preexisting degenerative disease in his neck that caused him to develop a disc herniation. In my opinion, the only remaining conclusion is that the claimant's job-related activity on September 11, 2002 either caused him to develop a herniated disc in his neck or, at the very least, significantly aggravated whatever preexisting injury he may have had as a result of his job-related accident of July 2001. On that basis, I have no hesitation to find that the claimant suffered a

compensable injury to his neck and that the respondent is liable for providing all reasonable and necessary medical treatment and related disability benefits as ordered by the Administrative Law Judge. For the aforementioned reasons, I must respectfully dissent from the Majority opinion.

SHELBY W. TURNER, Commissioner