

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F511346

GARY L. ELLIS,
EMPLOYEE

CLAIMANT

GREAT DANE TRAILERS,
EMPLOYER

RESPONDENT

GALLAGHER BASSETT,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED OCTOBER 13, 2006

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

Claimant appears pro se.

Respondents represented by the HONORABLE FRANK B.
NEWELL, 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 June 27, 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 agreed to by the parties
are hereby accepted as fact.
3. The claimant has failed to prove, by a
preponderance of the evidence, that he
sustained a compensable injury arising out of
and during the course of his employment with
Great Dane Trailers, and which was the result

of a specific incident identifiable in time and place of occurrence on August 30, 2005.

4. The claimant has failed to prove that his physical problems, need for medical treatment, and disability, if any, are causally related to an injury sustained while working for the respondent herein.

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 June 27, 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.

DISSENTING OPINION

I must respectfully dissent from the Majority's decision to deny the claimant benefits. The Majority, by affirming and adopting the decision of the Administrative Law Judge as their own, denies the claimant on the basis that he is allegedly not credible. However, after reviewing the record, I find that the claimant provided credible testimony and that he showed by a preponderance of the evidence that he sustained a compensable injury.

The Majority opines that the claimant contradicted himself, that his testimony was disputed by the respondents' witnesses, and that because the claimant did not report his injury was due to a work-related injury upon his initial medical treatment, he

did not sustain a compensable injury. Finally, they opine that the claimant had filed previous workers' compensation claims and therefore should have known the procedure in filing a claim.

After reviewing the record, I find that the claimant was credible. I note the Majority's assertion that the "appeared to contradict himself". However, in my opinion those contradictions were minor in nature and do not detract from the claimant's credibility.

In my opinion, the claimant's testimony reflects that of an employee that sustained what he believed to be a minor injury to work. Accordingly, he did not initially take action to file a workers' compensation claim or report an injury that he specifically related to his work. Likewise, when he initially received treatment, he did not relate the injury to his work activities because he felt his injury would resolve. While this would indicate the claimant perhaps should be precluded from benefits before providing notice to the respondents, I do not find that it makes his testimony less credible regarding the injury.

The claimant consistently testified that he initially believed his injury was a minor stain. While

the claimant's testimony was not detailed regarding exactly what he said to Taylor or others about his injury, it is clear from his testimony that he did not believe his injury was severe and instead believed it was a strain as commonly suffered by himself and other employees. Accordingly, in my opinion it is more probable than not the claimant simply reported the injury in passing and it was therefore not remembered. Likewise, the claimant admitted that he did not initially tell Spencer or England he was injured at work, which is consistent with his testimony that he believed he had simply strained himself at work.

Though the Majority notes the claimant's failure to report his injury until after he was discharged, I find that the claimant simply did not report the injury as work-related because he believed the injury would resolve and was minor. Furthermore, the claimant provided unrefuted testimony that he asked for an "emergency" vacation for medical reasons, and that when he attempted to return to work, he told Spencer that his injury was work-related after his vacation. As Spencer was the claimant's supervisor, I find that should have constituted sufficient notice of his injury.

Finally, I note the claimant's testimony that when Spencer was not responsive to his explicit indication that he was injured at work, he attempted to contact England to no avail. England testified that he was unaware if the claimant had attempted to contact him, but then admitted that he believed the claimant had attempted to visit with him while he was not in the office. In my opinion this lends credence to the claimant's testimony that he attempted to contact England in order to make sure his claim was filed, but then was, in essence, ignored by the respondents.

Ultimately, I found that while the claimant did a failed to clearly report his injury, he likely did sustain an injury at work. I further found his testimony regarding the injury to be credible. Accordingly, I must respectfully dissent from the Majority opinion.

SHELBY W. TURNER, Commissioner