

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F307328

RICKY L. EPPES, EMPLOYEE	CLAIMANT
ARKANSAS HOMECARE, INC., EMPLOYER	RESPONDENT
COMPANION PROPERTY & CASUALTY CO., CARRIER	RESPONDENT

OPINION FILED JULY 5, 2006

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

Claimant represented by HONORABLE STEVEN R. McNEELY, Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE ANDY CALDWELL, 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 April 7, 2005.

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

1. The stipulations agreed upon by the parties are reasonable and are approved.
2. The employee-employer-carrier relationship existed on June 19, 2003 and at all other relevant times.

3. Claimant sustained a compensable head and neck injury on June 19, 2003.

4. Respondents controvert Claimant's entitlement to any benefits after September 17, 2003.

5. Respondents have paid medical benefits as well as temporary total disability benefits to September 17, 2003.

6. Claimant failed to establish by a preponderance of the evidence that the requested medical treatment is reasonably necessary in connection with the compensable injury he received on June 19, 2003. Claimant's 2003 medical records indicate that his condition improved prior to his September 12, 2003 release. Because his current statements concerning causation are inconsistent with these contemporary medical records, Claimant's testimony is not reliable. Apart from Claimant's testimony, none of the medical records subsequent to May of 2004 establish a causal relationship between his compensable injury and his current need for medical treatment, including the pain or tingling in his left arm that did not begin until May 2004 and his documented bulging disc.

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

Based upon my de novo review of the record, it is my opinion that the Administrative Law Judge's opinion should be reversed. In my opinion, the claimant presented sufficient evidence to establish that the cervical disc

herniation which was discovered in August 2004 was the result of his job related injury and the respondent should be liable for providing the claimant all reasonable and necessary medical treatment for that condition as well as all other appropriate benefits.

_____The issue submitted for determination in this claim is, in essence, whether a herniated disc in the claimant's cervical spine which was discovered in August 2004, was the result of an admittedly job related accident which occurred on June 19, 2003. In this regard, the claimant contends that the herniation occurred in that accident but was not diagnosed by the respondent's designated treating physician. The respondent contends that whatever injury the claimant sustained in this job related accident had resolved by September 2003, and that the condition he is now complaining of is either the result of an independent event or some other cause unconnected to his job related accident.

_____The specific issue decided by the Administrative Law Judge was whether the additional medical treatment

recommended as a result of the claimant's herniated cervical disc was the liability of the respondent. The principle evidence relied upon by the claimant to establish a causal connection between the herniated disc and his compensable injury, was his testimony that his condition had never completely resolved and had begun to deteriorate following his release from the treating physician the respondent had chosen for him. However, the Judge found that the claimant's testimony was neither credible nor persuasive and held that he was unable to establish that his herniated disc was the result of his job related accident. The primary basis the Administrative Law Judge cited for his conclusion regarding the claimant's testimony was that the physical complaints the claimant testified to at the hearing were not in accord with statements contained in the medical record through September 2003.

_____The respondent is in the business of providing home health care to its individual customers. At the time of his injury, the claimant was employed as a delivery driver of home health care equipment such as oxygen tanks. On

June 19, 2003, the claimant was using a ramp device to assist in maneuvering oxygen bottles up and down stairs when an oxygen bottle that was setting at the top of a porch step fell and hit the claimant on the top of the head.

_____The respondent directed the claimant to undergo medical treatment and he eventually came under the care of Dr. John Waller, an orthopedic specialist in Heber Springs, Arkansas. In a report dated July 11, 2003, Dr. Waller diagnosed the claimant as suffering from a concussion and cervical strain. In reviewing the claimant's symptoms, Dr. Waller noted that the claimant was suffering from a headache and pain in his neck, primarily located in the area of the C7 and T1 vertebrae. Dr. Waller prescribed the claimant medication and directed him to undergo physical therapy.

_____When the claimant returned to Dr. Waller for follow-up treatment, the doctor stated in a clinical note dated August 1, 2003 that the claimant was not much improved and while his headaches were gone, his "neck pain is still as bad it was." After further physical therapy, Dr. Waller

stated in his note of August 27, 2003, that the claimant was continuing to improve and that he was not having any more headaches. However, the doctor also stated that the claimant "is still getting some pain in his neck but that he feels the therapy is helping immensely." Dr. Waller last saw the claimant on or about September 12, 2003 and, in a clinical note of that date, stated that the claimant was getting much better but that he still had "pain at times with weather changes at the end of the day depending upon his activity level." The doctor further stated that the claimant was definitely improving and that he should "be completely well within a year." Dr. Waller concluded the note by stating that the claimant could return to work without restrictions and that no further therapy was necessary.

_____ According to the claimant's testimony, he continued to have pain in his neck following his release by Dr. Waller. However, he relied upon Dr. Waller's statement that the condition would resolve itself within a year, and did not seek further medical treatment.

_____ Later, the claimant relocated to the state of Alabama. The claimant continued to have pain in his neck, and, by July 2004, the pain was radiating into his right arm. The claimant testified that he contacted the respondent's insurance carrier in order to obtain additional medical treatment since his condition had not resolved as Dr. Waller had indicated that it would.

_____ The respondent refused to authorize such medical treatment. Consequently, the claimant sought treatment on his own from Dr. Sumpter Blackmon, a general practitioner in Camden, Alabama. In Dr. Blackmon's progress notes of July 29, 2004, he notes that the claimant's neck pain was radiating into his left arm. He also outlined the claimant's history of a job related injury. Dr. Blackmon provided the claimant some medication and directed him to undergo an MRI.

_____ The MRI was performed on August 16, 2004. The report of that date reflects that the claimant was suffering from disc bulging at C6 and C7 with a degree of focal protrusion extending into the left neural foramen with moderate thecal sac mass effects.

_____The claimant then saw Dr. F. Donovan Hendricks, a neurosurgeon in Montgomery, Alabama. He noted in a letter dated December 20, 2004 that claimant had a disc herniation at C6-C7 on the left side, and that if physical therapy was not successful, the claimant was going to have to have a fusion.

_____The Administrative Law Judge's denial of the claimant's medical treatment was based upon his conclusion that there was no evidence supporting the contention that the claimant's disc herniation was the result of the compensable injury of June 29, 2003. According to the Administrative Law Judge, speculation would be required to reach that conclusion. I find that the opposite is in fact the case. In my opinion, the evidence in the record conclusively establishes that the claimant's disc herniation occurred at the time of his prior job related accident, and to find that some other intervening cause resulted in the herniation is sheer speculation with no evidentiary basis.

_____The claimant was injured when an oxygen bottle fell, striking him on the top of the head. Obviously, this

type of trauma could result in the type of injury the claimant is currently suffering from. Dr. Waller, during his initial treatment of the claimant, noted that the claimant's pain was at or near the C7 vertebral level. I do not believe that it is merely a coincidence that the disc herniation was later found to be at the C6-C7 levels.

_____I also reject the respondent's contention that the claimant's testimony is not credible because it is not supported by Dr. Waller's clinical notes. In comparing the testimony of the claimant to Dr. Waller's statements, I do not see that there is a great deal of discrepancy. The claimant stated at the hearing that he had continued to suffer neck pain throughout the course of his treatment by Dr. Waller and that it never entirely went away.

Dr. Waller's report, as outlined above, reflects just that scenario. That is, the claimant had some improvement in that his headaches had dissipated but he continued to complain of pain in his neck. In fact, my review of the trial transcript reveals the following exchange:

A. I had went to Dr. Waller on my regular checkup, and he was asking me

how I felt. And I told him that I still had discomfort in my neck and just didn't feel like it was just really getting altogether better.

He looked at my head movement, and his statement to me was, you know, "it will take a year for your neck to get well, and I'm going to release you today to go back to work." And I said, "You're going to release me?" I said, "Is there going to be any restraints?" He said, "No, fully released." And I asked him, "Well, you know, I'm not well." He said, "Well, no, but it's going to take a year for your neck to heal."

_____I simply fail to see the discrepancy between the claimant's testimony and Dr. Waller's notes. While the claimant may have improved somewhat, he continued to have neck pain which he advised Dr. Waller about. In fact, Dr. Waller's final progress note of September 12, 2003 acknowledges that the claimant is still having pain in his neck but stated in his opinion that the claimant's problems would be resolved "within a year." Unfortunately for the claimant, such was not the case and he was forced to seek additional medical treatment on his own beginning in late

July 2004, approximately one year after he was released by Dr. Waller.

In my opinion, the evidence linking the claimant's herniated disc at C6-C7 to the job related accident on June 19, 2003, is probative and convincing. The cervical condition the claimant was eventually diagnosed as having, is the kind of injury that would likely result from the type of accident the claimant had on June 19, 2003. That is, being struck on the top of the head by a heavy falling object.

In my opinion, a denial of this claim would be, in effect, punishing the claimant because his initial treating physician failed to properly diagnose his condition. Had Dr. Waller directed the claimant to undergo an MRI in 2003, there would be little question that the herniation was the result of a compensable injury. However, such was not the case. Also, this claimant did exactly what many other claimants have been criticized for not doing. That is, he cooperated fully with the medical treatment, made a good faith effort in his physical therapy, and attempted to

return to work as soon as possible following his injury. The claimant's lack of malingering and symptom magnification is now used to argue that his physical ailment was not sustained in his compensable injury. In my opinion, it is not the claimant who is relying on speculation to establish his claim, but the respondent who is speculating that some non-job related cause resulted in the claimant's herniated disc when there is absolutely no evidence of any intervening event or, despite having obtained several years of the claimant's medical records, no evidence has been offered showing that the claimant had prior cervical injuries.

In conclusion, it is my opinion that the claimant has more than met his burden of establishing that the traumatic injury he suffered on June 19, 2003, resulted in a herniated disc at C6-C7. I further find that the Administrative Law Judge's contrary finding should be reversed and the respondent should be ordered to provide the claimant all reasonable and necessary medical treatment needed for this condition and that they should be so ordered

Eppes - F307328

-14-

to provide to him all appropriate benefits provided for by
the Workers' Compensation Act.

SHELBY W. TURNER, Commissioner