

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F502562

MITCHELL D. GARRETT,  
EMPLOYEE

CLAIMANT

NORTH PACIFIC GROUP, INC.,  
EMPLOYER

RESPONDENT

SAFECO/AMERICAN STATES INSURANCE,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED DECEMBER 7, 2006

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

Claimant represented by the HONORABLE M. KEITH WREN,  
Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE GUY ALTON WADE,  
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 August 10, 2006. In said  
order, the Administrative Law Judge made the following  
findings of fact and conclusions of law:

1. The stipulations agreed to by the parties  
at the pre-hearing conference conducted on  
March 1, 2006, and contained in a pre-hearing  
order filed March 2, 2006, are hereby accepted  
as fact.

2. The parties' stipulation that claimant  
earned an average weekly wage of \$431.00 which  
would entitle him to compensation at the rates

of \$287.00 for temporary total disability benefits and \$215.00 for permanent partial disability benefits is 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 while employed by the respondent.

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 August 10, 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.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority opinion finding that the claimant did not sustain a compensable injury. After a de novo review of the record, I find that the claimant provided consistent, credible testimony regarding how he sustained a compensable injury. I further find that the testimony of the claimant and the testimony of Ronny Trimbball and Walter Auld should be accorded more weight than that of Gary Snider. Finally, I find that the medical records are largely consistent with the claimant's account of having a work-related injury. Accordingly, I would have reversed the Administrative Law Judge and awarded all requested benefits.

The Majority, by affirming and adopting the decision of the Administrative Law Judge as their own, opines that the evidence does not show the claimant sustained a compensable injury. In support of this finding, the Majority notes that the emergency room report indicates that the claimant injured his back, "while lifting boxes and twisting @ same time." They further note that another report gives a history of back pain due to lifting/twisting a heavy object and fails to mention the claimant was injured while working. Finally, they note Dr. Blair's report that the claimant injured his back at work but did not make a workers' compensation claim. Based on these reports, the Majority concludes that the medical reports are more consistent with Snider's version of events.

While I acknowledge that there are some discrepancies between the version of events contained in the medical records and the testimony of the claimant, I still find that the preponderance of the evidence shows the claimant's injury was sustained while working. First, I note that the claimant and Trimball all gave consistent testimony regarding the claimant's injury and how it occurred. Trimball, the claimant, and Snider all testified that the claimant reported back pain

immediately after he was lifting a motor that weighed some 250 to 300 pounds. Additionally, Auld testified the claimant told him he injured his back while working, which further substantiates the claimant's testimony that he injured himself due to working.

While Snider testified that the claimant reported he had pain due to moving at night, I note that Trimball denied the claimant made such a statement. Likewise, I note that Auld testified that the claimant injured himself while working, but denied having knowledge that the claimant was in the process of moving at the time of the injury. Furthermore, I do not think Snider would have made an "investigation" had he not believed the claimant injured himself at work.

I also find that the testimony of Snider should be given little weight. Snider testified that the claimant came to him the day after injuring himself and insisted that he had not injured himself at work. However, since the claimant was not asking to go home or in the office for any other purpose, I find it curious that he would go to Snider's office simply to tell him his back was hurting. Instead, I find it is more likely he went to Snider's office to make sure he was aware Snider knew he injured his back while working.

Likewise, I find that Snider's testimony regarding his "investigation" was suspect. Even if the claimant did not make it clear to Snider that he injured himself at work, I find that Snider was aware that the claimant injured himself at work. Snider testified that after the claimant mentioned his injury for the second time, he asked Trimball if the claimant had injured himself at work. Additionally, Snider testified that Trimball told him the claimant did not want to report an injury for fear of taking a drug test. Snider said,

So Ronny had come into my office, we were still talking about the situation, and I asked Ronny, I said, "Ronny, did Mitch say he had hurt his back out there?" He said his back was hurting, but he was not going to the doctor, he was not going to report an accident, because he didn't want to take a drug screen.

Snider later said that the only reason for performing a drug screen would be after a work-related accident had been reported. Based on this testimony, I can only conclude that Snider was aware the claimant had injured his back at work, but based on Trimball's statement believed the claimant did not report an accident because he did not want to submit to a drug screen. While the claimant's failure to report the injury would create questions as to whether the claimant violated a conduct

policy, in my opinion, it only strengthens the evidence indicating that the claimant did sustain an injury at work. Furthermore, it makes it even more evident that Snider was aware of the injury and the fact that it was sustained in the course and scope of employment.

With regard to the Majority's assertion that the claimant's delay in seeking medical treatment shows he was not injured at work, I call attention to the claimant's testimony that he had such a delay because he believed he had only sustained a strain. I further call attention to the medical report indicating that he had suffered from back pain for several days, thereby lending support to the claimant's testimony that he waited to see if he would get better before seeking medical attention.

I also find that the medical report indicating that the claimant was injured while moving boxes should not be used to conclude the claimant did not injure himself while at work. The medical report indicating the claimant injured himself while moving boxes was not completed or signed by the claimant and it is certainly possible that the nurse could have misunderstood if the claimant simply reported he injured himself while lifting at work. Furthermore, I note that one report

from the claimant's initial treatment specifically indicates the claimant injured himself while working. Additionally, the other medical report from that date indicates that the claimant injured himself while lifting a heavy object - not that he was injured due to moving. In my opinion, the report that the claimant was lifting a "heavy object" is more consistent with the lifting of a heavy motor than due to moving. When considered in conjunction with the claimant and Trimball's testimony that the claimant injured himself at work and the medical report indicating that the claimant injured himself at work, I find that the evidence shows that the claimant did injure himself in the course and scope of employment. Therefore, I would have reversed the decision of the Administrative Law Judge and awarded all requested benefits.

For the aforementioned reasons, I must respectfully dissent.

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SHELBY W. TURNER, Commissioner