

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F607351

CRAIG HALE,
EMPLOYEE

CLAIMANT

FORSGREN, INC.,
EMPLOYER

RESPONDENT

CONTINENTAL CASUALTY COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 29, 2007

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

Claimant represented by the HONORABLE J. RANDOLPH SHOCK,
Attorney at Law, Fort Smith, Arkansas.

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 February 9, 2007. 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 of this claim.
2. On June 7, 2006, the relationship of
employee-employer-carrier existed between the
parties.

3. On June 7, 2006, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$488.00 for total disability and \$366.00 for permanent partial disability, should such benefits have been appropriate.

4. The claimant has failed to prove by the greater weight of the credible evidence that on June 7, 2006, he sustained a "compensable injury" to his lumbar spine, as that term is defined by Ark. Code Ann. §11-9-102(4) (A) (i).

5. The respondents have denied the occurrence of any compensable injury to the claimant's lumbar spine on June 7, 2006, and have controverted this claim in its entirety.

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 covered by the Act; however, the claimant has failed to

establish the elements necessary to prove the compensable injury by a preponderance of the evidence.

Therefore we affirm and adopt the February 9, 2007 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 Hood 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 credible, consistent testimony that he sustained an injury on June 7, 2006. In my opinion, the preponderance of the evidence shows that though the claimant sustained a back injury on June 3, 2006, while pushing a mineral block, that injury resolved. I further find that the claimant's more lasting injury, which ultimately

required surgery, was sustained on June 7, 2006.

Accordingly, I must respectfully dissent.

The claimant was incredibly forthright in his testimony that on June 3, 2006, he, in the process of moving a mineral block estimated to weigh 10 to 12 pounds, injured his back. However, the claimant also testified that his back pain was "pretty well gone" on the same day. The claimant further testified that on the date of his work-related injury on June 7, 2006, he was pain free until he bent over and picked up an angle iron. At that time, he suffered from immediate pain throughout his lower back and down to his knee. The claimant testified that his stepdaughter, Danielle Harmon, saw the incident. A coworker named Andre, also saw him not long after the incident. The claimant said Harmon and Andre took him to the doctor. The claimant testified he called the foreman the following day and reported that he had injured himself so badly picking up the angle iron that he could not come to work.

The claimant testified that he received treatment through the VA on private health insurance until Dr. Runnels told him that his injury was caused by running equipment for several years. The claimant described that Dr. Runnels told him that picking up the

channel iron, “. . . just irritated it and broke the camel's back, more or less.” The claimant told Dr. Runnels he could just pay for it with his private insurance and Dr. Runnels told the claimant that it was a workers' compensation claim. At that point, the claimant pursued a workers' compensation claim.

The claimant's testimony was largely corroborated by Harmon, who testified that the claimant was picking up an angle iron and injured himself. Harmon said Andre came and asked the claimant if he was okay. At that point, she took the claimant to the doctor. Harmon further indicated that she recalled the claimant injuring himself with the block, but that the claimant, “. . . didn't complain about it or nothing afterwards, really.” She further indicated that after the block incident, the claimant was able to continue performing his general job duties.

Jimmy Ray Burnett, Dirt Superintendent, also testified. He indicated that on June 5, 2006, the claimant complained of having a sore back. However, he was able to continue to perform his job until the incident on June 7, 2006. Burnett testified that Harmon reported the claimant had injured himself while picking up something from the trailer. He also said the

claimant had reported an similar injury. Burnett testified,

Q All right. Did you become aware at any time that week or later on that he was saying that he had hurt his back bending over and picking up something out of a trailer?

A Well, yeah. I think they went in - - we went - - they went in to unload a battery and a laser, which is a box, and had two metal stakes and I don't remember whether it was Danielle or - - seems like it was Danielle called and said he had hurt his back unloading the stakes or a battery or something and got a catch and went to the ground, yeah.

Q Did he ever tell you about that?

A Well, yeah. I mean I heard about it. I wasn't there, but - -

Q But did he tell you about it?

A Yeah.

Q When did he tell you about it?

A I don't know whether it was that evening or the next day he called. He wasn't there. Danielle was actually the one that I heard first about hurting his back.

Q So you heard about it first from Danielle, but did you later talk to him on the telephone?

A Yeah, I talked to him off and on, yes.

Q And did he tell you about that?

A Yeah. He was hurt bad and he was going to go to the doctor with it.

Q And did you have a conversation with Mr. Hale about what likely caused his back to hurt?

A Well, I think the mineral block probably didn't help matters or the mineral block might have caused it, plus lifting, the post might have made it worse or whatever. I mean working construction, your back can go out at any time.

Based on the testimony of the claimant, Harmon, and Burnett, I find that the weight of the evidence shows that the claimant did sustain an injury on June 7, 2006. Clearly, the claimant was able to work prior to June 7, 2006. Additionally, while it is apparent that the claimant had injured his back on June 3, 2006, whatever injury the claimant sustained was not so severe that it prevented him from being unable to work. As such, I find that regardless of whether the claimant injured his back on June 3, 2006, and regardless of whether that problem had completely resolved, the claimant sustained a compensable injury to his back.

Though the Administrative Law Judge and the Majority assert that the claimant was somehow not credible because his medical records initially mention

the mineral block incident, I find that to be of no consequence. As has been seen numerous times by this Commission, a doctor often does not record an accurate or complete history regarding an injury. Furthermore, I found the claimant's testimony in this case to be compelling, particularly since Harmon and Burnett, who was the respondents' own witness, testified that the claimant believed he had aggravated his back when he bent over and picked up the angle iron.

Additionally, I note the claimant testified that he told the doctors of both the mineral block incident and the angle iron incident. I found this testimony to be consistent and credible in that the claimant was forthright in his testimony regarding both incidents. Additionally, when reviewing the medical records, it seems to me that the claimant generally provided his physicians with a full and accurate history. Unfortunately, it is apparent that those reports were not always fully discussed or noted in each individual report.

In fact, on June 13, 2006, a nurse, for the first time, seems to have fully documented the history of the claimant's injury. In particular, the report clearly indicated that the claimant injured his back

while moving a salt block on June 3, 2006 and then sustained another injury on June 7, 2006, when he picked up a channel iron.

Furthermore, Dr. Runnels' report also describes that the claimant sustained an injury on June 3, 2006, but that it was aggravated on June 7, 2006. This also corroborates the testimony of the claimant, Harmon, and Burnett. The report, which is dated June 30, 2006, indicates,

It started on June 3, 2006, when he picked up a salt block. His right side was burning and he reached over to pick up some channel iron and the pain was so severe he went to his knees. It was worse in his right hip. It was worse in his right hip. He walked to his truck. The pain was going sharply down to his knee and front of the thigh, nothing below the knee. He denied numbness. He has had some minor problems before, but this is the first time it ever went down his leg. It was worse with the first lifting event, but got unbearable when he lifted the channel iron.

In my opinion, the language of this note seems to be the most accurate account of the claimant's injury. It is consistent with the testimony of the claimant, Harmon, and Burnett, and should therefore be given great weight. When reviewing the note it is apparent that the claimant sustained a minor injury of

no consequence on June 3, 2006, and that he aggravated that injury on June 7, 2006, which ultimately led to his need for treatment and surgery.

Notably, Dr. Runnels, based on the aforementioned history, concluded that the claimant had sustained an injury while picking up the channel iron. He was also so insistent as to the cause of the injury that he told the claimant to file a workers' compensation claim. As such, I find that the claimant has met his burden of proof.

Finally, I reject the Majority's conclusion that the opinion of Dr. Runnels should be rejected because he believed the claimant had a herniation, when in fact, surgery revealed that he suffered from no herniation and instead had simply suffered an aggravation of degenerative, arthritic changes. The claimant's MRI was read by the radiologist to show that the claimant had a herniated disc. Likewise, Dr. Runnels concluded the same. In fact, even at the time of surgery, the claimant was noted to have stenosis and compression at the L2-3 level, which was the level previously identified as being herniated. Certainly, the fact that two physicians before the surgeon believed the claimant had a herniation shows that Dr. Runnels is

certainly competent and that the claimant, did indeed, have objective findings.

While the Majority concludes that because there ultimately was no herniated disc, Dr. Runnels' opinion should be discounted, that simply is not the case. Rather, the determinative facts of the case are that the claimant was not having significant back problems until he lifted the channel iron. After that point, the claimant was prescribed an anti-inflammatory and Valium, which was noted on June 13, 2006, to have been prescribed, "FOR MUSCLE RELAXATION." As the claimant had sustained no serious injury that prevented him from working prior to the incident on June 7, 2006, it is clear that the claimant aggravated his asymptomatic, degenerative condition. As such, the Majority errs in finding that the claimant did not sustain a compensable injury and denying related benefits.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner