

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F608477

JAMES ALLEN,
EMPLOYEE

CLAIMANT

ALLEN HEATING & COOLING, INC.,
EMPLOYER

RESPONDENT

CAMBRIDGE INTEGRATED SERVICES,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 28, 2008

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

Claimant represented by the HONORABLE RONALD MCCANN,
Attorney at Law, Fayetteville, Arkansas.

Respondent represented by the HONORABLE ERIC NEWKIRK,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed July 31, 2007. The administrative law judge
found that the claimant proved he sustained a compensable
injury to his cervical spine and that the claimant was
entitled to an 11% permanent partial impairment rating.
After reviewing the entire record *de novo*, the Full
Commission reverses the administrative law judge's opinion.

The Full Commission finds that the claimant did not prove he sustained a compensable injury to his neck or cervical spine. We find that the claimant did not prove he sustained any permanent partial disability as a result of his compensable lumbar injury.

I. HISTORY

The record indicates that James Wayne Allen, II, now age 32, was treated for pain in the cervical and thoracic region beginning in March 1993. Spasm was reported in March 1993, October 1994, and September 1996. Dr. Mark F. Olsen assessed back pain in February 2003. Dr. Olsen prescribed medication "as needed for muscle spasm." The claimant was assessed with lumbar strain in July 2003 and chronic back pain in August 2003. The claimant was assessed with musculoskeletal neck pain in February 2005. Dr. Olsen noted in October 2005, "He states that he has been grinding his teeth and he is going to have 22 crowns placed." Dr. Olsen assessed chronic daily headache and "Bruxism (teeth grinding)."

The parties stipulated that the claimant sustained a compensable injury to his low back on January 30, 2006. The claimant testified that while attempting to use a rope to

pull a furnace into an attic, "I heard a pop, a snap, bad pain. And I just went down." The claimant testified, "I was hurting from top to bottom that first day....My neck down to my lower - lower back."

Dr. Olsen saw the claimant on February 1, 2006: "Patient reports injuring his back last Monday at work pulling heavy object, heard back pop....Now has pain in low mid lumbar area with pain radiating to upper posterior right thigh." Dr. Olsen assessed "lumbosacral strain with radicular symptoms." A Workers Compensation - First Report Of Injury Or Illness was prepared on February 2, 2006, indicating that the claimant had sustained an injury on January 30, 2006: "EE was installing furnace when he strained his low back." Dr. Olsen assessed chronic low back pain on April 11, 2006.

Dr. Olsen noted on May 1, 2006, "Patient is having lower back pain and neck pain. He states that he is still grinding his teeth and that contributes to his neck pain." Dr. Olsen assessed musculoskeletal back pain and planned physical therapy for the claimant's chronic lumbar and neck pain.

Tana White, a physician's assistant, corresponded with Dr. Olsen on May 31, 2006: "James Allen was seen in the Neurosurgery Clinic on May 31, 2006, in consultation for his back and neck pain. As you know, Mr. Allen is a 31-year-old left-handed white male who complains of a three-month history of acute low-back pain while moving a furnace estimated to weigh approximately 80 to 95 pounds. He reports feeling a pop in his lower lumbar region, with the acute onset of pain that radiated to his right leg....He states that his neck pain is generalized neck pain of approximately an eight-month history....He has marked spasms of the paracervical and paralumbar spine....A cervical spine series and lumbar spine series were performed during the clinic visit today. The plain films series reveal multiple levels of cervical spondylosis and lumbar spondylosis. There is evidence of degenerative disc changes, as well as straightening of the normal cervical and lumbar lordosis."

An x-ray report dated May 31, 2006 showed the following: "AP, lateral, flexion and extension, oblique view, cervical spine, demonstrating normal craniocervical alignment. There does appear to be mild angulation of the cervical spine in forward flexion, but it does not appear to

be abnormal in nature. There is normal facet imbrication. Significant disc space settling at the C5-6 level."

Ms. White discussed a conservative treatment plan which included additional diagnostic testing.

An MRI of the claimant's cervical spine was taken on June 9, 2006: "This cervical MRI demonstrates disc protrusion at C5-6 in the central and left paracentral region that slightly flattens the spinal cord. The neuroforamina appear adequate."

A lumbosacral MRI was taken on June 9, 2006, with the following impression:

1. Desiccation and mild broad-based disc protrusion at L5-S1, with signal consistent with annular fissure. There is no evidence of nerve root impingement.
2. Mild desiccation at L4-5 disc.

Dr. D. Luke Knox reported on June 19, 2006, "He was noted to have a significant central disc herniation at C5-6, as well as disc space changes at 5-1. I informed James that he is in no peril of losing neurologic function, but he has ruptured these discs secondary to his work-related injury occurring three months ago. I informed him that these should resolve with time. I have started him on a strengthening program, cervical and lumbar traction."

The claimant testified that he stopped working for the respondent-employer on or about July 20, 2006.

Dr. Olsen noted on July 27, 2006, "neck and low back stiff with muscle spasms."

Dr. Knox wrote to Dr. Olsen on August 2, 2006: "I reviewed his MRI scan of both cervical and lumbar spine, could discern no evidence of compressive pathology that would give us these symptoms. In order to be on the safe side, I believe it is imperative that he undergo myelography."

Dr. Olsen noted on August 17, 2006, "neck stiff with muscle spasms."

Dr. Knox stated on August 24, 2006, "I reviewed his radiographic workup, which indeed showed the disc herniation at C5-6 on the MRI scan as well as the disc space changes at L5-S1. Quite frankly, James is miserable with his complaints. He is ready to proceed with surgery. I urged him to try to ride this out, but he is so miserable, he is ready to proceed accordingly."

Dr. Olsen noted on August 28, 2006, "neck stiff with muscle spasms."

The record contains a Radiology Report dated September 8, 2006:

At C2-3 there is a mild broad based disc protrusion seen, causing some flattening of the anterior thecal sac but no significant neural foramina or central canal stenosis is seen.

At C3-4, there is a minimal broad based disc protrusion seen but no significant neural foramina or central canal stenosis.

At C4-5, minimal broad based disc protrusion is again noted but no significant central canal or neural foraminal stenosis is present.

At C5-6, there is a left paracentral disc protrusion seen, causing mild left stenosis. No evidence of narrowing is seen on the right.

At C6-7 and C7-T1, no significant disc protrusion, neural foramina or central canal stenosis is noted.

FINDINGS:

CT was performed from the level of mid to upper body of L2 through the sacrum.

Vertebral bodies appear to all be normal in height. Disc spaces appear to be relatively well maintained.

At L2-3 no significant disc protrusion, neural foramina or central canal stenosis is identified.

At L3-4 no significant disc protrusion, neural foramina or central canal stenosis is seen.

At L4-5 there is a mild disc protrusion seen and some minimal hypertrophy of the ligamentum flavum causing very mild bilateral neural foramina

stenosis but no significant central canal stenosis.

At L5-S1 very minimal to mild broad based disc protrusion is seen, causing very mild bilateral neural foramina stenosis but no significant central canal stenosis.

The impression from the September 8, 2006 Radiology Report was "Very mild disc disease identified at L4-5 and L5-S1."

Additionally, a cervical and lumbar myelogram and CT of the lumbar spine on September 8, 2006 revealed the following impression: "Left paracentral disc protrusion seen at C5-6, causing some left-sided neural foramina stenosis. Lumbar spine myelogram and CT demonstrates some minimal degenerative changes at L4-5 and L5-S1."

Dr. Jared Ennis performed a right C5-6 cervical facet injection on September 19, 2006.

Dr. Knox reported on September 20, 2006, "I reviewed the results of his myelogram, which actually were unimpressive. He did have a herniated disc at C5-6 on the left, which is very mild, without demonstrable evidence of compressive pathology that would explain his right arm symptoms. He did have mild degenerative changes at the L4-5 and L5-S1 levels."

Dr. Olsen stated on October 12, 2006:

As Mr. Allen's primary care physician, I saw him on 2/1/2006 after sustaining a work related injury while pulling a furnace into an attic on 1/30/2006. Because of continued problems with this injury, he was referred to Dr. Luke Knox for his evaluation. As per Dr. Knox's letter to me dated 6/19/2006, Dr. Knox stated that he felt that Mr. Allen's ruptured cervical and lumbar discs were secondary to his work related injury sustained on 1/30/2006. I concur with this assessment.

Dr. Knox informed Dr. Olsen on October 19, 2006, "I do not believe it would be wise to recommend surgery at this point. I would like to see him exhaust all his conservative measures. I went ahead and sent him back to Dr. Ennis for epidural steroids."

A Functional Capacity Evaluation was done on January 2, 2007: "Mr. Allen underwent functional evaluation this date with unreliable results for effort. Mr. Allen put forth inconsistent effort and demonstrates many inconsistencies with inappropriate illness responses. Overall, Mr. Allen demonstrates the ability to perform work at least at the LIGHT Physical Demand Classification as determined through the U.S. Department of Labor over the course of an average workday."

The claimant followed up with Dr. Knox on January 10, 2007: "Mr. Allen is rather frustrated with his failure at nonoperative measures. He has been through an extensive conservative trial. Sorry that I have absolutely nothing to offer from a surgical standpoint. He may want to consider closing out his workers' compensation claim. I would strongly recommend that he pursue another opinion."

Dr. Scott M. Schlesinger examined the claimant on February 19, 2007:

This 31-year-old male said he was injured 01/30/06 while working. He was apparently moving a furnace unit. He claims to have had neck and back pain since....He comes now for a neurosurgical independent medical evaluation....

He brought the MRI scan of the cervical and lumbar spine. This study shows a small disc protrusion at C5-6 to the left without neural compression or cord compression. This is strictly nonoperative. The lumbar MRI scan is basically normal and definitely is nonoperative.

Differential Diagnosis: It certainly sounds like he had a musculoskeletal cervical and lumbar injury from work if his history is accurate. There is minimal cervical disc protrusion. If the patient's history is accurate, then this could have been caused from the accident, but it certainly does not need any further treatment.

Impression/Plan/Discussion: He has exhausted all conservative care and there is nothing surgical to do. I think he has reached maximum medical improvement in both his neck and back issues. This would be the case regardless of the cause

of the neck complaints. He had an FCE which was "unreliable" but determined that he could do at least light duty. There is nothing to give him a disability rating for in regards to the lumbar spine. As regards the cervical spine, if this were compensable, I would give him a rating of 4% for the minimal changes that are present.

As regards the work restriction issue, this is a tough problem. Based on objective findings, I really could see nothing that would limit his ability to return to full duty work. However, he gave an unreliable effort on the FCE and, therefore, it is impossible to know what his full limitations were because of the unreliable effort. At minimum, he could return to light duty and based on the MRI findings, I suspect he could return to full duty....

Dr. Olsen informed the claimant's attorney on March 8, 2007, "Mr. Allen suffered a work related injury in January, 2006, injuring his neck and low back....Due to the continuing problems with pain and disability that Mr. Allen is having, I recommend that he be evaluated at the Texas Back Institute. I also recommend that he see a pain management physician for the medical management of his back and neck pain."

A pre-hearing order was filed on March 20, 2007. The claimant contended that he had sustained injuries to his neck and lower back as a result of his accident. The claimant contended that medical bills relating to the low back injury had been paid but that bills relating to the

neck injury had not been paid. The claimant contended that his healing period had not ended and that he was entitled to further temporary total disability benefits. The claimant contended that he was entitled to payment for medical care related to his neck injury.

The respondents contended that the claimant had sustained a compensable lumbar/low back injury at the time of the January 30, 2006 work incident. The respondents contended that the claimant "did not sustain a compensable neck/cervical problems (sic) in the months preceding the injury, and the claimant's complaints following the incident were solely to the lumbar/low back area. While the claimant had previous lumbar/low back problems as well, the respondents accepted the claim as a compensable aggravation of the pre-existing condition."

The parties agreed to litigate the following issues:
"1. Compensability of the claimant's cervical problems on January 30, 2006. 2. Related medical. 3. The claimant's entitlement to temporary total disability from January 10, 2007 to May 18, 2007. 4. The claimant's entitlement to permanent partial impairment to the low back and cervical spine. 5. Attorney's fees."

Dr. Knox corresponded with the claimant's attorney on May 18, 2007:

I have had the opportunity to review Mr. James Allen's records, as well as his chart. As you know, I saw Mr. Allen over the past year, the last time being January 10, 2007, at which time I had recommended that he go ahead and close out his worker's compensation claim. From the standpoint of his permanent partial disability, according to "The Guides for Evaluation of Permanent Impairment, Page 113, Table 75-II, Section B, under un-operated, stable, with medically documented injury, pain, and rigidity, associated with none to minimal degenerative changes, such as those involving MRI, under the subheading of lumbar,"

Mr. Allen would qualify for a 5% permanent partial disability to the body as a whole. In addition to this, associated with this, along with the same guides, that included herniated nucleus pulposus, under cervical, he would qualify for a 6% permanent partial disability to the body as a whole. That would be a total of 11% permanent partial disability.

An administrative law judge found, among other things, that the claimant proved he sustained a compensable injury to his cervical spine on January 30, 2006. The administrative law judge found that the claimant proved he was entitled to an 11% permanent partial impairment rating as rated by Dr. Knox. The respondents appeal to the Full Commission.

II. ADJUDICATION

A. Compensability

Ark. Code Ann. §11-9-102(4) (A) defines "compensable injury":

(i) An 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[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4) (D). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16) (A) (i). The requirement that a compensable injury be established by medical evidence supported by objective findings applies only to the existence and extent of the injury. *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997).

The employee's burden of proof shall be a preponderance of the evidence. Ark. Code Ann. §11-9-102(4) (E) (i). Preponderance of the evidence means the evidence having greater weight or convincing force. *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

In the present matter, the parties stipulated that the claimant sustained a compensable injury to his low back on January 30, 2006. An administrative law judge found that the claimant proved he also sustained a compensable injury to his cervical spine on January 30, 2006. The Full Commission reverses this finding. The claimant testified that he felt pain from his neck down to his back while pulling a furnace on January 30, 2006. The medical evidence does not corroborate the claimant's testimony. The first medical report of record, entered by Dr. Olsen on February 1, 2006, indicated that the claimant complained only of back pain, not neck or cervical pain. Dr. Olsen assessed lumbosacral strain with radicular symptoms. The First Report Of Injury on February 2, 2006 showed that the claimant had strained his low back, not his neck, on January 30, 2006. Dr. Olsen did not record a history of neck pain until an examination on May 1, 2006. Even then, Dr. Olsen noted that the claimant's neck pain was caused by the claimant's history of grinding his teeth. The claimant's neck pain was not caused by the January 30, 2006 lumbar strain.

Tana White, a physician's assistant, noted on May 31, 2006 that the claimant reported a history of acute low back pain resulting from the work-related furnace incident. The claimant informed Ms. White that his neck pain was "generalized neck pain of approximately an eight-month history." The claimant did not inform Ms. White that his neck pain resulted from the January 30, 2006 lumbar strain. The Full Commission recognizes Ms. White's description of marked spasms in the paracervical spine. The record indicates, however, that the claimant had suffered from spasms since at least 1993. The record before us does not demonstrate that the marked spasms noted by Ms. White on May 31, 2006 were the result of the January 30, 2006 accidental injury. Nor does the May 31, 2006 x-ray finding of "straightening of the normal cervical lordosis" show that the claimant injured his neck or cervical spine on January 30, 2006. The June 9, 2006 notation of a C5-6 disc protrusion as shown on an MRI does not demonstrate that the claimant injured his neck or cervical spine on January 30, 2006. There is no other diagnostic testing of record demonstrating that the claimant injured his neck or cervical spine on January 30, 2006.

We recognize the June 19, 2006 report of Dr. Knox, to wit: "He was noted to have a significant central disc herniation at C5-6, as well as disc space changes at 5-1....he has ruptured these discs secondary to a work-related injury *three months ago* [emphasis supplied]. I informed him that these should resolve with time." Dr. Olsen opined in October 2006 that he concurred with the assessment of Dr. Knox that the claimant's "ruptured" cervical disc was "secondary to his work related injury sustained on 1/30/2006." The authority of the Commission to resolve conflicting evidence also extends to medical testimony. *Foxx v. American Transp.*, 54 Ark. App. 115, 924 S.W.2d 814 (1996). It is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). In the present matter, the causation opinions of Dr. Knox and Dr. Olsen were based on an inaccurate history provided to them by the claimant and are not entitled to significant probative weight. The record does not demonstrate that the claimant injured his neck or cervical spine as a result of the January 30, 2006 accidental injury to his low back. Dr. Schlesinger opined

in February 2007, "It certainly sounds like he had a musculoskeletal cervical injury and lumbar injury from work *if his history was accurate* [emphasis supplied]." To the extent that he claimed an injury to his neck or cervical spine, the claimant's history was not accurate and the claimant cannot rely on Dr. Schlesinger's opinion, or the opinions of Dr. Knox or Dr. Olsen, to establish a compensable injury to his neck or cervical spine.

The Full Commission therefore finds, pursuant to Ark. Code Ann. §11-9-102(4) (A) (i) and following, that the claimant did not prove he sustained an accidental injury causing internal or external physical harm to his cervical spine or neck. The claimant did not sustain an accidental injury to his neck or cervical spine arising out of and in the course of his employment. The claimant did not sustain an accidental injury to his neck or cervical spine as a result of a specific incident identifiable by time and place of occurrence on January 30, 2006. Nor the did the claimant establish a compensable injury to his neck or cervical spine by medical evidence supported by objective findings. The Full Commission recognizes the reports of muscle spasms on July 27, 2006, August 17, 2006, and August 28, 2006. We

have noted *ante* that the claimant was diagnosed with muscle spasm at various times beginning in March 1993. The evidence before us does not demonstrate that the reports of neck/cervical muscle spasm in 2006 were causally related to the claimant's accidental injury diagnosed as a lumbar strain on January 30, 2006.

The decision of the administrative law judge is reversed.

B. Anatomical Impairment

Permanent impairment, which is usually a medical condition, is any permanent functional or anatomical loss remaining after the healing period has been reached. *Ouachita Marine v. Morrison*, 246 Ark. 882, 440 S.W.2d 216 (1969). The Workers' Compensation Commission has adopted the Guides to the Evaluation of Permanent Impairment (4th ed. 1993), published by the American Medical Association, as an impairment rating guide. See, *Workers' Compensation Laws And Rules*, Rule 099.34; Ark. Code Ann. §11-9-522(g). Any determination of the existence or extent of physical impairment shall be supported by objective and measurable physical or mental findings. Ark. Code Ann. §11-9-704(c)(1)(B). Permanent benefits shall be awarded only upon

a determination that the compensable injury was the major cause of the disability or impairment. Ark. Code Ann. §11-9-102(F)(ii)(a). "Major cause" means more than fifty percent (50%) of the cause, and a finding of major cause shall be established according to the preponderance of the evidence. Ark. Code Ann. §11-9-102(14).

An administrative law judge (ALJ) found in the present matter that the claimant was entitled to an 11% permanent partial impairment rating. The Full Commission reverses this finding. The claimant is not entitled to any rating referable to his neck or cervical spine, because the claimant did not prove that he sustained a compensable injury to that anatomic region. The parties stipulated that the claimant sustained a compensable injury to his low back on January 30, 2006. On May 18, 2007, Dr. Knox assigned the claimant a 5% permanent partial disability rating for the claimant's lumbar spine. The Commission has the duty of weighing medical evidence and, if the evidence is conflicting, its resolution is a question of fact. *Green Bay Packaging v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 695 (1999).

In the present matter, the Full Commission attaches more evidentiary weight to the opinion of Dr. Schlesinger. Dr. Schlesinger reviewed the claimant's diagnostic testing and stated, "The lumbar MRI scan is basically normal and definitely is nonoperative....There is nothing to give him a disability rating for in regards to the lumbar spine." It is the duty of the Commission to translate evidence into findings of fact. *Johnson v. General Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994). In the present matter, the Full Commission assigns significant probative weight to Dr. Schlesinger's expert opinion that there was not a disability rating available for the claimant's lumbar spine. Nor is there any other evidence of record demonstrating that the claimant sustained any permanent anatomical impairment as a result of the January 30, 2006 compensable injury. The decision of the administrative law judge is reversed.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove he sustained a compensable injury to his neck or cervical spine. We find that the claimant did not prove he sustained any permanent anatomical impairment as a result of the January 30, 2006 compensable injury to his low back. The

Full Commission therefore reverses the opinion of the administrative law judge. The instant claim is denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

The majority has reversed an Administrative Law Judge's decision finding the claimant sustained a compensable injury to his cervical spine and awarding him permanent partial disability benefits. Based upon a de novo review of the record, I find that the Administrative Law Judge's decision in regard to both compensability and permanent partial disability benefits should have been affirmed and adopted by the majority. Therefore, I must respectfully dissent from the majority's Opinion.

In finding that the claimant did not sustain an injury to his cervical spine in the admittedly job-related accident of January 30, 2006, the majority is relying upon three factors. First, they note the respondent-employer did not state the claimant sustained an injury to his neck in the original injury report made to the respondent-insurance carrier. Secondly, the report regarding the initial medical treatment the claimant received from Dr. Mark Olsen, a Lowell general practitioner, did not mention any body part injured other than the claimant's lumbar spine. The final factor the majority uses to deny this claim is that the claimant had a history of complaining of cervical pain, including chiropractic treatment beginning in 1993.

In regard to the first point, it should be noted that the claimant is employed by a small, family-owned business. In fact, the individual who actually prepared the report that was transmitted to the insurance carrier, Linda Allen, testified at the hearing that she was a co-owner of the business and the claimant's mother. She stated that she generally works in the office and was not actually at any of the job

sites. However, when she was advised by her son and her husband about the injury, she promptly notified the insurance carrier. She testified that she was aware that the claimant had injured his back and his neck in the accident, but that she did not realize any specificity was required in reporting the injury. Consequently, she stated that she only mentioned the back because it appeared to be a more serious injury at that time. However, Mrs. Allen testified that she knew the claimant injured his neck in this incident and was aware that he was receiving medical treatment for it. She explained that she simply did not believe that it was necessary to detail all of the injuries the claimant might have sustained because she assumed that the workers' compensation insurance company would take care of all injuries sustained in the accident.

Mrs. Allen also testified that she had attended a number of the claimant's doctor visits and was aware that he had complained about his neck problems throughout his ordeal. She further explained that the claimant had originally been returned to work for a period of about six months following his injury because

of the hope that the problem he was having would not be "life changing."

The claimant's co-worker, Jessie Wilkes, also testified about the accident itself and the claimant's complaints immediately thereafter. According to Mr. Wilkes, the claimant was attempting to pull a furnace unit into the attic of a house under construction. While pulling on a rope, the claimant cried out in pain and dropped to the attic floor. Mr. Wilkes was definite in his testimony that the claimant complained of back and neck pain at that time and that his entire spine was stiff to the point the claimant could hardly move. Mr. Wilkes specifically noted that the claimant could not turn his head to look at someone; he had to turn his entire body. This testimony substantially corroborated the claimant's similar statements that he had experienced an immediate onset of neck and back pain at the time of the accident.

I find that the testimony of the claimant, Mr. Wilkes, and Mrs. Allen, establishes the claimant did complain of neck pain at the time of the accident. Unfortunately, these complaints were not transmitted on

to the respondent-carrier. Mrs. Allen acknowledges that it was her error in not providing this information to the carrier, but her testimony was that she did not see the omission as being a significant one.

I acknowledge that Dr. Olsen, in his initial treatment note, did not mention that the claimant was complaining of neck pain or had sustained a neck injury in his job-related accident. In Dr. Olsen's next treatment note of May 11, 2006, he also only discusses lower back pain. However, I note that in this report, he was treating the claimant for his chronic sinus problem, a condition which, in the past, frequently resulted in the claimant complaining of head and neck pain in the past. It was not until the doctor's May 1, 2006 report that the claimant's neck pain was discussed. Significantly, it was after this visit that the claimant was referred to Dr. Luke Knox, a Fayetteville neurosurgeon, for further evaluation and treatment.

As the majority has outlined above, the claimant received a substantial amount of treatment by, or at the direction of, Dr. Knox. In his report of June 9, 2006, Dr. Knox specifically stated that the

claimant's cervical and lumbar condition were secondary to his work-related injury. In fact, Dr. Knox described the claimant's cervical problem as being a "significant central disc herniation at C5-C6. . ."

As the claimant and Mrs. Allen testified, the claimant was complaining of neck pain following his accident. Unfortunately, these complaints were not noted by Dr. Olsen in the initial visit. But the claimant and Mrs. Allen testified that it is possible that they did not specifically report those to the doctor because, at the time, it appeared that the claimant's back condition was worse and was causing him most of his problems. However, later, when the claimant reported his neck pain to Dr. Olsen, he was immediately referred to Dr. Knox, to whom the claimant more fully explained his neck condition. As indicated above, Dr. Knox immediately related the claimant's neck condition to his compensable injury.

The last point the majority emphasizes is the claimant's past medical history. It is true that the claimant sought chiropractic treatment for an earlier neck injury. However, this treatment occurred following

a motor vehicle accident in 1993. The record contains progress notes regarding this chiropractic treatment, purporting to be from the Huntington Chiropractic Clinic covering 13 visits between March 13, 1993 through October 2, 1996. The notes discuss the claimant's complaints of localized neck pain with some muscle spasms and headaches. The progress notes do not mention any radiating pain in the shoulders, arms, or hands, or any other radicular symptoms.

Clearly, these reports do not document a significant cervical injury such as that noted by Dr. Knox. Further, I do not see any great importance in 13 chiropractic visits over a two-and-a-half year period, the last of which was almost ten years prior to the claimant's compensable injury.

The respondent also offered a number of reports from Dr. Olsen prior to the compensable injury. However, in reviewing these reports, which begin in 2002, I note that they deal primarily with the claimant's chronic respiratory problem. There are a few treatment notes that refer to an injury to the

claimant's back sustained from a fall from a tractor and fall down some stairs, but those reports do not discuss any injury to the claimant's neck. The only references to the claimant having neck pain are those associated with earaches, headaches, and other problems involving allergies, sinus, infections, and other respiratory conditions. Likewise, I do not see how these reports support a contention that the claimant had a pre-existing cervical condition which is responsible for his current symptoms. The claimant's current complaints of pain are of a more severe nature than anything discussed by Dr. Olsen prior to his job-related accident.

The only other pre-existing condition referred to by the respondent is a problem the claimant had with grinding his teeth during the night. The respondent implies this tooth-grinding problem caused his neck condition. However, the only association between these two conditions is referred to in Dr. Olsen's report of May 1, 2006, where he notes the claimant is grinding his teeth and, "that contributes to his neck pain." It does not appear to me that this is an opinion that the claimant's teeth grinding caused his cervical condition.

It is merely a comment that the teeth grinding may have exacerbated the claimant's pain symptoms. In fact, at this time, the severity of the claimant's neck problem had not yet been diagnosed. It seems highly unlikely that teeth grinding could have caused the significant cervical disc herniation reported by Dr. Knox.

In denying this claim, I believe the majority has misconstrued the medical evidence. I find that the claimant and his corroborating witnesses have fully explained the discrepancies in reporting the neck pain to the respondent carrier and I do not find convincing the medical evidence purportedly showing that the claimant had a pre-existing neck condition. I find it highly unlikely that the claimant could have been working in a heavy, manual labor position for a period of several years if his herniated cervical disc had pre-existed his job-related accident. The medical evidence relied upon by the respondent to establish a pre-existing condition documents nothing more than a short episode of localized neck pain in the early to middle 1990's. This was many years before the compensable

injury and does not appear to be a long-standing problem with the claimant.

In conclusion, it is my finding that the claimant has more than met his burden of establishing a compensable cervical injury arising out of and in the course and scope of his employment, and the claimant is entitled to benefits as awarded by the Administrative Law Judge.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner