

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F510767

DAVID T. AUSTIN,  
EMPLOYEE

CLAIMANT

EPOXYN PRODUCTS, LLC,  
EMPLOYER

RESPONDENT

NEW HAMPSHIRE INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 27, 2008

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

Claimant represented by the HONORABLE FREDERICK S.  
SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by the HONORABLE JARROD S.  
PARRISH, 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 October 29, 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 over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant's proffered Exhibit 2 should be admitted into evidence.

4. As held by the Arkansas Court of Appeals, the Arkansas Workers' Compensation Act is constitutional on the points argued by Claimant, and his motion to recuse is without merit.

5. As a result of Claimant's refusal to submit to a blood alcohol contest test on September 28, 2005, under Ark. Code Ann. § 11-9-102(4)(B)(iv) there is a presumption that his injury was substantially occasioned by the use of drugs or alcohol.

6. The sole evidence offered to rebut the presumption was Claimant's bare, unsupported testimony. I do not find Claimant to be a credible witness.

7. The claim is not compensable under Ark. Code Ann. § 11-9-102(4)(B)(iv).

8. Claimant has failed to establish the existence of a compensable injury by medical evidence supported by objective findings.

9. Because Claimant on May 13, 1999, exhibited the same symptoms, in the form of left ring and small finger numbness as documented in his medical records, as he did following the alleged September 24, 2005 accident, it would require speculation and conjecture to tie Claimant's symptoms to the alleged September 24, 2005 incident.

10. Claimant has not proven by a preponderance of the evidence that he sustained a compensable injury to his neck or back on September 24, 2005.

11. The reasonable and necessary medical care issue is moot in light of the above findings.

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 compensable injuries that are governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injuries are, indeed, injuries that are covered by the Act; however, the claimant has failed to establish the elements necessary to prove these compensable injuries by a preponderance of the evidence.

Therefore we affirm and adopt the October 29, 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.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.