

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F613700

JIMMY BALL, EMPLOYEE	CLAIMANT
WORK SOURCE, INC., EMPLOYER	RESPONDENT
EMPLOYERS INSURANCE CO. OF WAUSAU, INSURANCE CARRIER	RESPONDENT

OPINION FILED NOVEMBER 17, 2008

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

Claimant represented by the HONORABLE MARK EUGENE FORD, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE JAMES A. ARNOLD, II, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed April 21, 2008. 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 November 29, 2006, the relationship of employee-employer-carrier existed between the parties.
3. On November 29, 2006, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$254.00 for total disability and \$191.00 for permanent partial disability, should such benefits have been appropriate.

4. The claimant has failed to prove that he sustained a "compensable injury" to his back on November 29, 2006. Specifically, he has failed to prove the occurrence of a physical injury to his portion of his body that arose out of and occurred in the course of his employment with the respondent, was caused by a specific incident, and is identifiable by time and place of occurrence.

5. The greater weight of the credible evidence presented establishes that the claimant has alcohol in his body, at the time of his alleged accident and injury on November 29, 2006. The claimant has failed to prove by the greater weight of the credible evidence that any accident and injury he sustained on that date was not substantially occasioned by the presence of this alcohol in his system.

6. The respondents have denied that the claimant sustained a compensable injury to his back on November 29, 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 April 21, 2008 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

The majority is affirming and adopting an Administrative Law Judge's decision finding that the claimant failed to establish the occurrence of a job-related accident resulting in a compensable injury. After a de novo review of the record, I disagree with the majority's conclusion and therefore, I must respectfully dissent from the majority's opinion.

The claimant testified he was employed as a maintenance man for an apartment complex located in Fort Smith, Arkansas. He further testified on November 29,

2006, he sustained an injury to his back when he fell from a ladder.

After the fall, the claimant was unable to rise from the ground and summoned assistance with his cell phone. He was transported by ambulance to a local hospital emergency room. The claimant gave a history of a fall from a ladder to both the EMT with the ambulance and to the emergency room personnel.

Eventually, the claimant came under the treatment of Dr. Joseph Queeney, a Fort Smith neurosurgeon. Dr. Queeney diagnosed the claimant as suffering from a "burst fracture" of his T12 vertebrae. In a medical report and a deposition, Dr. Queeney opined this injury was the result of a traumatic accident, specifically, his fall at work. In order to relieve the claimant of his symptoms of radiating pain, numbness, and tingling, Dr. Queeney recommended a surgical procedure to reduce spinal cord pressure caused by the broken vertebrae.

At the hearing, the claimant testified he was replacing some fascia board along the top of a tool shed at his place of employment when he slipped from the ladder and fell. The claimant stated he was near the top of the ladder when he slipped and felt himself falling backwards. He went on to state he pushed off

the ladder because of some pipes on the ground at the foot of the ladder upon which he did not want to land. According to the claimant, the fall was approximately 15 feet. However, the EMT who took him to the hospital emergency room reported that his fall occurred while stepping onto the ladder and slipping on some pipes. An Emergency Room Intake report indicates he was injured when he, "stepped back off the ladder and slipped to his back." The emergency room report dated November 29, 2006, states the claimant was suffering from lower back pain secondary to a fall off of a ladder. The report states that, "the fall was about five to six feet". The majority has chosen to disregard the evidence outlined above, based upon nothing more than minor variances in how the accident happened.

I find that the differences in the descriptions of the fall are of no great significance. The important detail is that all of them consistently report that the claimant injured his back in a fall from a ladder. It is not surprising that the details of the accident vary somewhat since they were taken from the claimant in hurried and confused circumstances while the claimant was in substantial pain at the scene of the accident and later in a hospital setting after he had been given pain medication. As stated above, the

statements all relate a job-related accident involving a fall which injured the claimant's back. The temporal relationship between the fall and the claimant's back pain is highlighted by all three of the cited reports and they all record the same or very similar symptoms of pain in the claimant's back which radiated into his legs, accompanied by tingling and numbness.

The majority, by adopting the Administrative Law Judge's opinion, also discredits the claimant's testimony because it was believed it to be somewhat "illogical" and "bizarre." However, the claimant testified that while attempting to repair the roof of the tool shed, he slipped, and began falling backwards. He testified that he attempted to grab the top of the roof but his fingers slipped off. He further stated that, while he was losing his balance, he attempted to push off the ladder so that he could land on the ground and avoid some pipes at the foot of the ladder. I fail to see what is either illogical or bizarre about this explanation. Further, as indicated above, the relevant conclusion is that the claimant injured his back in a fall from a ladder. The specifics of how the fall occurred do not change what is essentially an undisputed fact. That is, the claimant injured his back in a fall from the ladder while at work.

Furthermore, I find that the medical evidence offered by the claimant is more than sufficient to establish he sustained a compensable injury to his lower back. The testimony and medical reports of Dr. Queeney provide a clear and logical medical basis for how the claimant's accident would have caused his injury and how this injury resulted in the symptoms the claimant is suffering from. According to Dr. Queeney, the claimant had a burst fracture of his T12 vertebrae. Dr. Queeney explained this type of injury is usually the result of "loading" of the spine. He stated a fall as the claimant described would be a likely cause of this injury. Dr. Queeney also noted the presence of fluid in the injured area which he believed was consistent with a recent injury.

I acknowledge that the claimant had a history of prior back injuries. I also acknowledge the claimant received some medical treatment for those back injuries in the past. However, none of the past diagnostic tests the claimant underwent in regard to his earlier back injuries discovered a fractured thoracic vertebrae. In fact, during his deposition, Dr. Queeney was shown some x-rays of the claimant's thoracic spine taken on March 8, 2004. These x-rays were taken after a previous injury to the claimant's lower back. Dr. Queeney

interpreted the x-rays as not showing a burst fracture at T12. Dr. Queeney concluded the deposition by stating it was his belief to a reasonable degree of medical certainty, that the claimant's injury was not the result of a chronic condition but was from a traumatic injury resulting from his job-related accident.

The final conclusion made by the Administrative Law Judge, which the majority has adopted as their own, is in regard to the presumption of intoxication provided by Ark. Code Ann. §11-9-102 (4) (B) (4) (b). The presumption was applied based upon the claimant's own testimony that he had eaten lunch at approximately 11:00 a.m. and, with his meal, he had consumed one beer. The majority's rationale is this testimony is sufficient to establish the "presence" of an intoxicating compound at the time of the claimant's injury. In my opinion, this determination is not only hyper-technical, but also erroneous. It is true the statute does not set out a threshold amount of intoxicants which must be in someone's system to create the presumption. It merely requires that alcohol or other similar compound be present. However, the claimant's testimony that he had consumed one beer approximately two-and-a-half hours prior to his accident does not, in my opinion, establish there were any

intoxicants in his system when the injury happened. The human body metabolizes alcohol, as with all substances which are ingested, and breaks them down into its molecular components. No evidence was presented to demonstrate how much, if any, alcohol would have still been in the claimant's system when the accident occurred if he had consumed one beer with a meal. I do not believe that it is proper to simply assume that some would have been present at this time. To find the presence of alcohol on no more of a factual basis than this is a misapplication of the Workers' Compensation Act and is improper.

In conclusion, I find that the claimant's testimony at the hearing and his contemporaneous statements given to the ambulance EMT and the emergency room personnel sufficient to establish that he suffered an accidental job-related fall. Further, Dr. Queeney's finding that the burst fracture was traumatically induced and not a chronic condition establishes a relationship between the fall and the claimant's condition, and find Dr. Queeney's opinion as to causation is entitled to considerable weight. For the aforementioned reasons, it is my finding the claimant sustained a job-related accident and establishes the occurrence of a compensable injury and is entitled to

appropriate medical and disability benefits. Since the majority reached a contrary result, I must respectfully dissent from their opinion.

PHILIP A. HOOD, Commissioner