

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F412581

RICHARD CHAPMAN,
EMPLOYEE

CLAIMANT

EPOXYN,
EMPLOYER

RESPONDENT

AMERICAN HOME ASSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED DECEMBER 15, 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 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 June 27, 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 over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has not proven by a preponderance of the evidence that he sustained a compensable mechanical back injury.

4. Because of the above finding, the balance of the issues are moot and will not be addressed.

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 June 27, 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

I must respectfully dissent from the majority's opinion. After a de novo review of the record, I find that the claimant has proved that he is entitled to reasonably necessary medical treatment in connection with his compensable back injury. Specifically, I find that the claimant's injury arose out of and in the course of his employment with the respondent, and therefore I must respectfully dissent.

The claimant testified that he was employed by the respondent, which makes laboratory table tops. The claimant testified that these table tops must be baked in large ovens at the respondent's facility. The claimant testified that he was injured at work on August 21, 2003, while repairing an oven, when a co-worker opened an adjacent oven, striking the claimant was struck, injuring his back, chest and right arm. The

claimant testified that the oven was operating at over 300 degrees Fahrenheit and its door weighed between 350 and 400 pounds.

The claimant testified that his back pain did not begin immediately after the injury, but has gradually grown worse. The claimant testified that he began noticing his back was injured by more than just the burn beginning about three months after the injury. The claimant testified that the pain was a "little nagging pain all the time", and that the pain no longer resolved on its own.

The medical records from August 21 and 28, 2003 indicate that the claimant complained of lower back, right arm, and chest injuries. The medical records indicate the claimant's injury was related to Workers' Compensation.

The majority, by affirming and adopting the opinion of the Administrative Law Judge, find that the claimant failed to prove by a preponderance of the evidence that his back injury arose out of and in the course of employment. I disagree and find that the claimant proved by a preponderance of the evidence that his back injury arose out of and in the course of employment. The phrase "arising out of the employment"

refers to the origin or cause of the accident, so the employee is required to show that a causal connection exists between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). Causal connection is generally a matter of inference, and possibilities may play a proper and important role in establishing that relationship. Osiose Wood Preserving v. Jones, 40 Ark. App. 190, 843 S.W.2d 875 (1992). Here, the claimant testified that he injured his back on August 21, 2003 while attempting to repair an oven when an adjacent oven door was opened, striking and burning him. The claimant initially attempted to ignore the pain, but it became too great and he then went to Dr. Rebecca Barrett-Tuck. The medical note states that the claimant "reports that about two years ago at work a heavy door hit him in the back. He was off work for about four days and then returned despite residual pain." Dr. Tuck wrote in the note that an MRI of the claimant should be taken to properly diagnose the pain. The claimant has consistently stated that his back was injured on August 21, 2003.

Furthermore, the Administrative Law Judge erroneously states that the Dr. Rebecca Barrett-Tuck's

medical note mentions the claimant's back injury "over three years and three months after the door fell on Claimant-and is in fact the first reference to such an injury." A closer reading of the medical records indicates that the respondent's doctor, Dr. Richard Burnett, noted lower back, right arm, and chest injuries on August 21, 2003, the day of the injury. Similarly, the medical record from Dr. Burnett's follow-up exam on August 28, 2003 again notes injuries to the claimant's chest, right arm, and back. At the hearing, the claimant testified that the injury was simply a "little nagging pain all the time.... It don't go away no more...", which bolsters the causal relation to the August 21, 2003 injury. Based on the above, I find that the claimant has shown, by a preponderance of the evidence, that his back injury arose out of and in the course of the August 21, 2003 accident at work.

For the aforementioned reasons, I must respectfully dissent. _____

PHILIP A. HOOD, Commissioner