

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F601523

BRIAN COOK, EMPLOYEE	CLAIMANT
CASTLE RENTALS, EMPLOYER	RESPONDENT
AIG CLAIM SERVICE, TPA	RESPONDENT

**OPINION FILED OCTOBER 27, 2008**

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

Claimant represented by HONORABLE JASON HATFIELD, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE JARROD PARRISH, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

**OPINION AND ORDER**

The claimant appeals from a decision of the Administrative Law Judge filed February 1, 2008.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on September 27, 2007, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage of \$390.00 which would entitle him to compensation at the rate of \$260.00 for total disability benefits and \$195.00 for permanent partial disability benefits is also hereby accepted as fact.

3. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury while employed by the respondent.

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 that is covered by the Act; however, the claimant has failed to establish the elements necessary to prove a compensable injury by a preponderance of the evidence.

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.

Thus, we affirm and adopt the 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.

**DISSENTING OPINION**

I must respectfully dissent from the majority opinion. I find, based on a de novo review of the record that the claimant has met his burden of proving by a preponderance of the evidence all of the elements of a compensable specific incident neck injury.

To support the denial of benefits, the majority, by affirming and adopting the Administrative Law Judge, has placed more weight on the respondent witnesses than those witnesses called by the claimant. I disagree with this decision. The claimant's witnesses all gave credible testimony and their testimony should have been afforded great weight. The claimant's witnesses, contrary to the respondent witnesses, are not interested parties. The Commission is not required to believe the testimony of the claimant or any other witness. However, the testimony of an interested party is always considered to be controverted. Continental Express v. Harris, 61 Ark. App. 198, 965 S.W.2d 811 (1998). As they are not interested parties, I find the testimony of the claimant's witnesses to be more credible than that of the respondent witnesses.

Furthermore, I disagree with the majority's conclusion regarding the credibility of the claimant's testimony, which the Administrative Law Judge also stated was contradictory. I find that any contradictions in the claimant's testimony are minor, and are certainly not

indicators that the claimant is not a credible witness. I find that the claimant offered credible testimony regarding two specific incidents at work which caused his neck injury. Although the claimant is inarguably a remarkably poor historian, I find that the claimant is a credible witness, whose testimony, corroborated by the claimant's witnesses, should not be discounted.

In conclusion, I find that the claimant has met his burden of proof with respect to all elements of a compensable neck injury which occurred on or about January 11, 2006 and is entitled to workers' compensation benefits in accordance with his injury.

For the aforementioned reasons I must respectfully dissent.

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PHILIP A. HOOD, Commissioner