

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F701402

JOHN H. FOOT, EMPLOYEE	CLAIMANT
SEARS ROEBUCK & CO., EMPLOYER	RESPONDENT
INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, CARRIER	RESPONDENT

OPINION FILED DECEMBER 2, 2008

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

Claimant represented by HONORABLE THOMAS W. MICKEL, Attorney at Law, Conway, Arkansas.

Respondent represented by HONORABLE LEE MULDROW, 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 January 7, 2008.

The Administrative Law Judge entered 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 credible evidence that he sustained a compensable injury.

4. The balance of the issues litigated at the hearing are moot in light of the above finding and will not be addressed.

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.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. The majority, by affirming and adopting the Administrative Law Judge, finds that the claimant failed to prove compensability of any injuries incurred on November 27, 2006. More specifically, the Administrative Law Judge found that the claimant failed to show a causal relationship between the claimant's injury and the motor vehicle accident on November 27, 2006. Based upon a de novo

review of the record, I find that the claimant has met his burden of proof by a preponderance of the evidence for a compensable specific incident neck injury, and therefore, I must respectfully dissent.

History

_____ The claimant worked for Sears Roebuck and Company as an HVAC repairman. This job required the claimant to drive a vehicle to and from different repair jobs. The claimant testified that on November 27, 2006, while driving the company vehicle, he was involved in a motor vehicle accident. The respondent has not controverted this fact. After the motor vehicle accident, the claimant attempted to work through the injury for 3 weeks. On December 21, 2006, the claimant visited the Conway Regional Hospital Emergency Room, presenting with complaints of pain behind his eyes, neck pain, and left arm tingling. The claimant stated in the Emergency Room that his pain had been "gradually getting worse" since an "injury at work 2 months ago." The medical records from a December 28, 2006 doctor visit indicate that the claimant's "worst pain feels like it is under his left shoulder blade. This radiates into the cervical paraspinals

and into the head causing headaches." The medical records from January 30, 2007, state that "[Patient] also notes having an incident about a month ago that has aggravated his neck & shoulders." The medical records from March 2, 2007, state that the pain the claimant was experiencing started on December 21, 2006.

Discussion

The majority denies the claimant benefits based on the finding that the claimant could not prove compensability of any injuries incurred on November 27, 2006. In making this finding, the majority, by adopting the opinion of the Administrative Law Judge, states that the claimant failed to causally connect the November 27, 2006, motor vehicle accident and the injury for which the claimant sought treatment on December 21, 2006. I find that this is incorrect and that the claimant has shown a sufficient causal connection between the motor vehicle accident that happened at work and the treatment the claimant received.

The claimant presented proof by a preponderance of the evidence that his neck 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). Arkansas Courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. Hall v. Pittman Construction Co., 234 Ark. 104, 357 S.W.2d 263 (1962). Causal connection is generally a matter of inference, and possibilities may play a proper and important role in establishing that relationship. Osrose Wood Preserving v. Jones, 40 Ark. App. 190, 843 S.W.2d 321 (1983). The court has stated that if months have passed between an accident and the manifestation of an injury, reasonable men might disagree about the existence of a causal connection, See Kivett v. Redmond Co., 234 Ark. 855, 355 S.W.2d 172 (1962); Wentz v. Servicemaster, 75 Ark. App.

296, 57 S.W.3d 753 (2001). Here, the claimant credibly testified that he injured his neck when he was involved in the November 27, 2006, motor vehicle accident. Furthermore, the medical records from December 21, 2006, show that the claimant was experiencing pain which he expressly attributed to this motor vehicle accident. The medical records corroborate that the claimant presented to the emergency department complaining of neck pain that was becoming progressively worse. I find that the claimant's credible testimony shows that his neck injury manifested within a reasonable time after the November 27, 2006, auto accident, the occurrence of which was uncontroverted by the respondents.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner