

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F704469 & F710002

JOSE LOUIS HERNANDEZ,
EMPLOYEE

CLAIMANT

KEN DOBBS HYUNDAI,
EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 21, 2008

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

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

Respondents represented by the HONORABLE MICHAEL E.
RYBURN, 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 January 31, 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 September 16, 2006, and February 12, 2007, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On September 16, 2006 and February 12, 2007, the claimant earned wages sufficient to entitle him

to weekly compensation benefits of \$293.00 for total disability and \$220.00 for permanent partial disability, should such benefits have been appropriate.

4. The claimant has failed to prove that he sustained "compensable" injuries to his low back or lumbar spine on either September 16, 2006 or February 12, 2007. Specifically, the claimant has failed to satisfy the statutory requirements for a "compensable injury" that are contained in Ark. Code Ann. §11-9-102(4)(D). He has failed to prove the presence of any "objective findings" to support the actual existence of any physical injuries involving his low back or lumbar spine.

5. The respondents have denied that the claimant sustained compensable injuries to his back on either September 16, 2006 and/or February 12, 2007, and have controverted both claims in their 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 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 January 31, 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 opinion. The majority, by affirming and adopting the findings of the Administrative Law Judge, finds that the claimant failed to provide evidence of compensable injuries "supported by objective findings." After a de novo review of the record in its entirety, I find that the claimant has proved his injury by objective medical evidence, in the form of documented spasms and

prescribed medication for spasms, and therefore, I must respectfully dissent.

The claimant testified that on September 16, 2006, he slipped and fell at work, injuring his lower back. On September 19, 2006, at the direction of the respondent, the claimant was treated by Dr. Ronald Bertram at Northwest Physician's Clinic for his lower back injury. Dr. Bertram diagnosed the claimant with a "lumbar strain." Dr. Bertram prescribed Prednisone/Cortisone as an anti-inflammatory, Soma tabs for muscle spasm, and Lorcet Plus tabs for pain. Additionally, Dr. Bertram limited claimant's lifting to less than 10 pounds, and restricted him from repetitive bending or twisting. The claimant testified that he did not completely recover from this injury, but was much better until February 12, 2007, when he again slipped and fell at work. At the direction of the respondent, on February 13, 2007, the claimant was treated by Dr. William Kendrick at Northwest Physician's Clinic. On this date, the claimant's chief complaint was "back injury - W/C." In the report, it indicates that claimant had leftover Lorcet from before; however, the patient had taken all the Prednisone and Soma tabs for his muscle spasms, which had been prescribed by Dr.

Bertram. Patient reported slipping in grease at work and the assessment was "probable strain, lumbosacral." Dr. Kendrick prescribed Prednisone for the spasms, with Naprosyn and Norco for pain. Dr. Kendrick noted that claimant would be "very limited on range of motion and lifting for 1-3 weeks." The claimant returned to the clinic on February 23, 2007, wherein he was treated by Dr. Robert Wilson, who increased the claimant's pain medication to a narcotic, Percocet, and recommended an MRI. Dr. Wilson also increased the claimant's work restrictions to lifting no more than 10 pounds and no repetitive bending, twisting, or stooping.

The Arkansas Supreme Court has stated that muscle spasms constitute objective findings. Continental Express, Inc. v. Freeman, 339 Ark. 142, 4 S.W. 3d 124 (1999). Additionally, prescriptions for muscle spasms also constitute objective findings. Estridge v. Waste Management, 343 Ark. 276, 33 S.W. 3d 167 (2000) and Fred's, Inc. v. Jefferson, 361 Ark. 258, 206 S.W. 3d 238 (2005). Therefore, the majority's determination that the claimant did not present "objective findings" is clearly erroneous.

Furthermore, the majority, by affirming and adopting the Administrative Law Judge, who noted that

the claimant was prescribed medication for muscle spasms, yet dismissed this evidence, stating: "While medication was apparently prescribed for muscle spasms, if "needed", there is no mention that any such spasms were independently observed", has failed to follow explicit prior rulings of the Arkansas Court of Appeals.

In Estridge, the Supreme Court stated:

First, he was indisputably diagnosed with back strain for which he received medication after the crosstie incident. The medication was directed "as needed for muscle spasm" which the Commission dismissed as a direction to appellant rather than a medical finding. We find the Commission's dismissal of this fact to be absurd. A doctor would not prescribe medication directed to be taken "as needed for muscle spasm" if he did not believe muscle spasms were existent. See Estridge v. Waste Management, Supra.

In Fred's, The Supreme Court stated:

[A] reasonable inference from the chronology of events was that the medication and physical therapy were prescribed to aid [the claimant] and to treat her injury; any other construction of these events did not withstand scrutiny or pass the test of reasonableness. See Fred's Inc. v. Jefferson, Supra.

In conclusion, I find that the claimant has met his burden of proving by a preponderance of the

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evidence all of the elements required for compensable specific incident injuries sustained on September 16, 2006, and February 12, 2007, including medical evidence "supported by objective findings."

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner