

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F603672

RICK KINNEY,
EMPLOYEE

CLAIMANT

FIBRESOURCE, INC.,
EMPLOYER

RESPONDENT

AMERICAN HOME ASSURANCE,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JUNE 24, 2008

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

Claimant represented by the HONORABLE EDDIE H. WALKER,
JR., Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE CAROL LOCKARD
WORLEY, 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 April 19, 2007. 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 all relevant dates, including March 10, 2006, the relationship of employee-employer-carrier-third party administrator existed between the parties.
3. On March 10, 2006, the claimant earned wages sufficient to entitle him to weekly compensation

benefits of \$488.00 for total disability and \$366.00 for permanent partial disability, should such benefits have been appropriate.

4. The claimant has failed to prove by the greater weight of the credible evidence that he sustained a "compensable injury" to his back on March 10, 2006. Specifically, he has failed to prove by the greater weight of the credible evidence the occurrence of any compensable injury to his back on or about that date, that arose out of and occurred in the course of his employment with the respondent.

5. The respondents have denied the occurrence of any compensable injury to the claimant's back 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 19, 2007 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. The majority, by affirming and adopting the opinion of the Administrative Law Judge, finds that the claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his thoracic spine while employed by the respondent. After a de novo review of the record, I find that the claimant has met his burden of proof by a preponderance of the evidence that he sustained a compensable specific incident injury to his thoracic

spine on March 10, 2006 and, therefore, I must respectfully dissent.

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. §11-9-102(4) (A) (i) (Repl. 2002), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (4) (D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

I find that the claimant has proved by a preponderance of the evidence that he sustained a compensable specific incident back injury on March 10, 2006. First, I find that the claimant proved by a preponderance of the evidence that his thoracic spine injury arose out of and in the course of his employment

and was caused by a specific incident identifiable by time and place of occurrence. 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). "Identifiable by time and place" means subject to identification and does not require the claimant to specify the exact time of the occurrence. Edens v. Superior Marble & Glass, 346 Ark. 487 (2001).

In this case, the claimant's credible testimony establishes that his back injury was the result of a specific incident arising out of and in the course of his employment on March 10, 2006. The claimant testified that on March 10, 2006, he was loading baled

cardboard with his forklift, or bobcat, when the bobcat tilted forward. The claimant testified that he attempted to correct the tilt by lowering the front forks rapidly, causing the bobcat to crash backwards. The claimant testified that he and the machine bounced violently during the crash.

The claimant's initial medical record from March 13, 2006 shows that the claimant went to Dr. E. Michael Callery reporting back pain starting on March 10, the day of the bobcat crash, and worsening over the weekend. The report indicates that the claimant thought the pain might be related to a "gas bubble." The report indicates that Dr. Callery, while providing the claimant with antacids, also treated the claimant with a muscle relaxer.

The next day, March 14, the claimant returned to Dr. Callery. The March 14 medical notes from Dr. Callery state that the claimant continued to believe his pain was related to constipation and gas. However, Dr. Callery apparently disagreed and sent the claimant to have x-rays of his thoracic and lumbar spine taken. On March 15, Dr. Callery ordered an MRI of the lumbar and thoracic spine.

Dr. Callery's March 23 medical report indicates that the doctor noted "not really much there" regarding the claimant's lumbar spine, but was unable to diagnose anything for the thoracic section of the claimant's spine because, although one had been ordered, no MRI of the thoracic spine was taken. The medical notes indicate that on March 23 the claimant reported the bobcat incident to Dr. Callery and that the claimant subsequently visited the company doctor, Dr. Terry Clark, on March 29, 2006.

On March 29, the medical notes from Dr. Terry Clark stated that the MRI of the thoracic spine ordered by Dr. Callery was never taken. Apparently, both doctors found that a thoracic spine injury was possible due to the claimant's report of the bobcat incident, as Dr. Clark reordered an MRI of the thoracic spine, which was finally obtained on April 17. On April 18, Dr. Ismail Ihmeidan diagnosed a disc herniation at thoracic level T8-T9 and disk protrusion at T7-T8.

Here, the claimant's credible testimony shows that he was involved in a specific incident at work: the bobcat crash on March 10, 2006, which jarred his entire body, including his spine. Although the claimant initially believed he was suffering from constipation,

when his "gas" pains did not resolve, he told his doctor, who apparently already suspected a back injury, about the bobcat incident. The claimant then reported the incident and his injury to the respondent, who sent the claimant to the company doctor, where he was subsequently diagnosed with a herniated disk. I find the claimant's doctor visits and the diagnosis of a thoracic disk herniation are so closely related in time to the incident at work that it is simply unreasonable to find that the claimant was injured in any other manner but in the manner to which he credibly testified and reported to both his family doctor and the company doctor.

The majority, by affirming and adopting the Administrative Law Judge, found that the claimant's account was not credible. I disagree. The respondent has given no reason to doubt the claimant's testimony. The claimant was a long-time employee of the respondent. The claimant was trusted to work for the respondent as a plant manager. When asked, the manager over the claimant stated that the claimant was trustworthy. Additionally, the respondent did not present any evidence rebutting the claimant's testimony as to the occurrence of the specific incident.

Furthermore, I am not convinced by the majority's argument that the claim should be deemed non-compensable simply because the claimant's initial medical records did not reflect he believed his injury was related to work. It is not the responsibility of the claimant to diagnose and treat himself. Additionally, just as the Act does not require an immediate diagnosis, it does not require that the claimant insist that the doctor's history contain the gory details of the occurrence. Siders v. Southern Mattress Company, 240 Ark. 267, 398 S.W.2d 901 (1966). The claimant, through his testimony and the initial medical report from Dr. Callery, believed he had "gas pockets" and constipation. The claimant was wrong. He had a herniated disk, as shown by the April 17 MRI. Despite his "error", the claimant should not have his claim denied simply because he was unable to articulate his exact diagnosis to the respondent's satisfaction.

In conclusion, I find that the claimant has met his burden of proof by a preponderance of the evidence for a compensable specific incident injury and that a causal connection between the March 10, 2006 bobcat accident and the subsequent diagnosis of thoracic disk herniation exists, therefore, the claimant is

entitled to reasonable and necessary medical treatment and disability benefits associated with his compensable injury.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner