

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F513215 & F602788

STEVEN LAMB, EMPLOYEE CLAIMANT

NORACE COMPANY, INC., EMPLOYER RESPONDENT

TWIN CITY FIRE INSURANCE COMPANY, CARRIER RESPONDENT

OPINION FILED OCTOBER 9, 2008

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

Claimant represented by HONORABLE MIKE J. ETOCH, JR., Attorney at Law, Helena, Arkansas.

Respondent represented by HONORABLE ANDY L. CALDWELL, 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 August 1, 2007.

The Administrative Law Judge entered the following findings:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. That the employee/employer/carrier relationship existed at all relevant times, including January 5, 2006.

3. Claimant has failed to establish by a preponderance of the evidence that he suffered a compensable neck injury on January 5, 2006, during the course and scope of her (sic) employment.
4. Respondent has fully controverted the payment of all additional benefits.

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 denying the compensability of this claim. From a de novo review of the record, I find that the claimant proved, by a preponderance of the evidence, the compensability of a January 5, 2006 injury. Further, I find that the January 5, 2006 injury, in combination with the admittedly compensable injury of September 13, 2004, resulted in two herniated discs in the claimant's cervical spine and that medical and

temporary total disability should have been awarded for these injuries.

The opinion of the Administrative Law Judge was affirmed and adopted in its entirety by the majority without additional discussion. Therefore, the opinion of the Administrative Law Judge and all of the findings and conclusions contained in that decision are now the majority opinion. ITT/Higbie v. Gilliam, 34 Ark. App. 154, 807 S.W.2d 44 (1991).

The claimant contended that he sustained compensable injuries on September 13, 2004 and January 5, 2006, and that as a result of these injuries, he was entitled to temporary total disability from August 4, 2006 until a date to be determined and medical benefits incurred subsequent to his first visit with Dr. Hart, the doctor who treated the claimant as a result of a change of physician request granted by the Commission. The respondents accepted as compensable the September 13, 2004 injury, but contended that the claimant's condition was not causally related to a January 5, 2006 injury and, in the alternative, that the

injury was the result of horseplay. The Administrative Law Judge found that the claimant's cervical disc problems were not causally related to the January 5, 2006 incident, that there were no objective findings to support the compensability of the injury, and that the claimant was not entitled to temporary total disability or medical benefits. The Administrative Law Judge made no findings on the "horseplay" defense and the respondents neither appealed this portion of the decision nor argued the point on appeal.

In order to prevail on this claim, the claimant must prove, by a preponderance of the evidence, the occurrence of a specific incident, identifiable by time and place of occurrence, arising out of and in the course of employment, causing physical harm to the body, requiring medical treatment or resulting in disability, which is established by medical evidence and supported by objective findings. Ark. Code Ann. §11-9-102(4)(E)(i); §11-9-102(4)(A)(i); and §11-9-102(4)(D). Of these statutory requirements for compensability, the only ones in issue are: (1) whether the claimant proved the occurrence of a specific

injury on January 5, 2006; and (2) if the January 5, 2006 injury was compensable, whether the claimant's cervical problems were proved to be causally related to the January 5, 2006 injury or a combination of that injury and a previous admittedly compensable injury of September 13, 2004.

Did the claimant prove the occurrence of a specific injury?

There is no dispute as to the compensability of the claimant's first injury of September 13, 2004. The evidence concerning the claimant's second injury of January 5, 2006 was as follows. The claimant testified that on January 5, 2006, he was helping a co-worker, Shannon Bundren, move 78-pound drums when he felt his back "pull real bad". He felt pain in his neck and the middle of his back and had an electrical shock sensation in his shoulder, elbow, hand, and fingers. The claimant testified that he did not tell his co-workers but reported his injury immediately to supervisory personnel. He was then taken to the company doctor by an employee of Norac.

Jeff Wages, Norac's Environmental Health and Safety Coordinator, confirmed that the injury was promptly reported to him and that the claimant was taken immediately to the company doctor.

Terence Sikes, a co-worker, testified that while equipment is available to move heavy drums, they are often moved manually and weigh up to 78 pounds. Mr. Sikes said that he was working in another area "a ways" from him when the claimant sustained his injury and that he did not witness the accident. He saw the claimant lifting drums on the day in question. He also said that he saw the claimant lift an empty barrel over his head. He said that there are times when lifting an empty barrel over your head would be a part of the job. Mr. Sikes said that the claimant did not tell him about the injury but that he knew of the injury within hours after it occurred because the supervisor asked him about it.

Shannon Bundren, another co-worker, confirmed that the claimant had helped him manually move the 78-pound barrels on the day of his injury. He said that to move the

barrels manually was a common practice. He said that, after returning from a break, he learned that the claimant had gone to the supervisor's office to report an injury. Since the claimant said nothing to him about an injury before the break, he assumed that the claimant had been injured while he was on break. He said that, earlier that day, he had seen the claimant lift a barrel head high. He testified that empty drums were lifted above waist level when they were "packing them out" and that this was a part of the job on the day in question.

The claimant admitted to lifting some empty barrels over his head on the day of injury and said that this was a part of the job that day because they were stacked above waist level.

In summary, the claimant's testimony and the testimony of the other witnesses are not in conflict and present a credible and consistent picture of the circumstances surrounding the January 5, 2006 injury. Both of the claimant's co-workers confirmed that they saw the claimant lifting barrels on the day in question. Both were

aware, within a very short period of time, that the claimant had been injured, even though they were not eyewitnesses to the occurrence and the claimant did not report the injury to them. However, the claimant reported the injury immediately to his supervisor and was promptly transported to the doctor by a company employee. In short, there were no real factual disputes among the witness which would call into question the claimant's account of his injury.

Despite the clear evidence that the injury occurred as the claimant said it did, the Administrative Law Judge concluded that the claimant's account of injury was not credible and that the other evidence of record was in conflict with his testimony. In attempting to discredit the claimant's testimony, the Administrative Law Judge made several accusations which are either irrelevant or not consistent with the actual testimony of record. She said that neither of the claimant's co-workers actually saw the claimant get injured. The claimant never claimed that there were eyewitnesses to the accident. Mr. Sikes testified that he was in another area "a ways" from the claimant when the

injury occurred. Mr. Bundren was present when the injury occurred, but the claimant did not feel compelled to report the injury to him and there was no reason he should have been required to do so. The claimant would be expected to report his injury to his supervisor, which he did promptly.

The Administrative Law Judge pointed out that the claimant was seen lifting a barrel over his head within the hour preceding his injury and this was done while the claimant was "joking" around. Neither the claimant, nor any other witness, testified that the claimant was injured while lifting a barrel over his head. Even though it was obvious that the claimant, at some time during the day, lifted a barrel over his head, all of the testimony indicates that this was a part of his job that day and that he was moving full barrels onto a pallet at the time of his injury. With regard to whether the claimant was joking around when engaged in overhead lifting, the evidence of this alleged fact is virtually nonexistent. The entire testimony on this point was given by Mr. Bundren, as follows:

Q. One thing I want to be very specific about. You're not claiming he hurt himself doing any kind of horseplay or anything?

MR. CALDWELL: Your Honor, I don't think he's...he's testified he doesn't know how he was injured.

MR. ETOCH: I just wanted to be clear about it.

Q. You're not claiming that any of this caused any injury to him?

A. I didn't see him hurt himself...

MR. CALDWELL: I'm gonna object. I don't think he has personal knowledge of how the claimant was injured. He's testified he has...he never was advised that the claimant was injured.

JUDGE WEBB: I'm gonna over rule your objection, but I don't know...I will say this, I don't know that there's any evidence of horseplay, in the record right now, Mr. Etoch. So I don't know what you're asking. If you want to try to rephrase your...

MR. ETOCH: No further questions Mr. Bundren. As far as I'm concerned you can be dismissed.

JUDGE WEBB: Do you have other questions?

MR. CALDWELL: Yes.

RE CROSS EXAMINATION

RE CROSS EXAMINATION BY MR. CALDWELL:

Q. Mr. Bundren, was there any reason for Mr. Lamb to be lifting a barrel, whether it was loaded or unloaded, that morning when you were working with him, up head high?

A. He's probably just joking around. Steve was always telling jokes and stuff.

Q. But as far as what he was doing, and what he was required to do for work, was there any reason that he had for lifting a barrel up head high.

A. I don't guess.

While Mr. Bundren guessed that there was no reason for the claimant to be lifting barrels over his head, he had previously testified to the contrary, as follows:

Q. Does anybody lift the seventy-eight (78) pound drums up over their waist?

A. By doing the job?

Q. Yes.

A. I guess.

Q. Were there empty drums there that day?

A. Yeah, we was packing them out.

It should be noted that, at one time, the respondents claimed that the claimant was engaged in "horseplay" at the time of his injury which, if proved, would defeat his claim under Ark. Code Ann. §11-9-102(B)(i). However, the Administrative Law Judge made no finding on this defense. Further, the respondents did not appeal this portion of the Administrative Law Judge's decision nor have they raised the issue on appeal. This is because there is no evidence of horseplay and the Administrative Law Judge erred in using such an unsubstantiated fact to discredit the claimant's testimony.

And finally, the Administrative Law Judge said that the claimant testified that he was helping Mr. Bundren load drums on a pallet when he sustained his injury and that Bundren gave testimony that contradicted this fact. The Administrative Law Judge said that it was Bundren's testimony that he, alone, moved all of the barrels in question and that the claimant did not help. This is a false statement. Bundren acknowledged that the claimant helped him move the barrels that day, as follows:

A. No I remember working with him that morning, I can tell you that. If that's the morning you're talking about.

Q. The morning when he was claiming that he was injured?

A. The one he went to...when he went to Jeff's office? That morning? Yeah, I was with him that morning. We was unloading a red.

Q. And what is unloading the red? What is that?

A. Just filling thirty-five (35) Kg drums and sending them down the roller to put it on pallets. And then later on

wrap them, and make sure the labels are turned to the outside, and get them ready to ship out.

The Administrative Law Judge also said that the claimant testified that he was helping Bundren move barrels at the time of his injury and that the fact that Bundren was on break at the time the injury occurred contradicted the claimant's testimony. It was the claimant's testimony that he hurt himself in the presence of Bundren but did not tell him he was injured. It was Bundren's assumption that the claimant was injured while he was on break because he had no knowledge of the injury before he left for break and learned of it when he returned. Bundren candidly testified that he had made this assumption and that he did not know the exact time of the claimant's injury, just that it occurred sometime before the claimant went to the supervisor's office to report the injury.

In conclusion, the claimant's testimony concerning the events surrounding his injury were fully supported by the other evidence of record and established the occurrence

of a specific injury on January 5, 2006. The Administrative Law Judge inaccurately interpreted the testimony of the witnesses in this case, creating conflicts and credibility issues were none should have existed. Therefore, the opinion of the Administrative Law Judge should have been reversed on this issue.

Are the claimant's neck problems related to his compensable injuries?

With regard to prior injuries and pre-existing medical conditions, the record fails to demonstrate any significant conditions which pre-existed his first compensable injury with Norac. The record indicates that the claimant had a low back injury in 1995 working for another employer which resulted in pulled muscles. His pre-employment physical with the employer showed only mild degenerative disc disease in his thoracic spine with the rest of the lumbar spine being within normal limits. Dr. Scott Hall, who conducted the pre-employment physical, indicated that the claimant's "back, spine" was normal and that he was employable.

On September 13, 2004, the claimant sustained an injury with the respondent when his foot slipped off a pallet while lifting a 50-pound bucket. This injury was accepted as compensable and benefits paid. The medical reports of record indicate that the claimant was treated for both back and neck problems as a result of this injury. However, since the issues at hand involve only the claimant's neck injury (cervical discs at C5-C6 and C6-C7), the medical evidence relating to his back injury will not be analyzed.

The claimant was initially treated by Dr. James H. Pillow, the company doctor, who ordered physical therapy for his back and neck and had lumbar and cervical X-rays performed. The claimant was referred to Dr. Francis X. Camillo, an orthopedic surgeon, who ordered additional physical therapy. On October, 25 2004, Dr. Camillo reviewed X-rays taken of the claimant's neck and said that there was "significant disc space narrowing" at C6-C7 and C5-C6. According to Dr. Camillo's report of that date, he told the claimant the following:

In terms of his upper extremity his cervical cracking as well as his numbness in his arm I explained the cervical cracking is secondary to arthritis however the numbness in the arm **more than likely maybe coming from a disc herniation.** (emphasis added)

On July 22, 2005, the first MRI of the cervical spine was performed which showed a "**disc** osteophyte complex" at C6-C7 and a "**disc** protrusion" at C5-C6. Thereafter, the claimant was seen by Dr. Scott M. Schlesinger, a neurosurgeon. Dr. Schlesinger's treatment centered on the claimant's back injury, as his neck complaints had apparently subsided at this time. In this regard, Dr. Schlesinger said that the claimant "has had episodes of right-sided numbness in his arm" but noted that "this has gone away".

During the period of time he was undergoing the above-mentioned medical treatment, the claimant was provided with light duty requiring no heavy lifting. Despite this fact, he continued to suffer problems and had physical limitations as a result of his injuries.

On January 2, 2006, the claimant returned to his original job duties, which necessitated heavy lifting. On January 5, 2006, the claimant testified that he was helping a co-worker load 78-pound drums on a pallet when he re-injured his back and neck. He was initially treated for back pain by Dr. Pillow, the company doctor, on the date of injury. On January 16, 2006, he was seen for "pain in neck/back" by Jackie Early, an advanced practice nurse in Dr. Patrick Bell's office, the claimant's family physician. On January 24, 2006, the claimant was sent to Dr. Brent Sprinkle, a doctor of osteopathic medicine, by the company doctor. In his report of that date, Dr. Sprinkle acknowledged that the claimant was experiencing neck pain and intermittent numbness in his arm. He considered the possibility of **cervical radiculopathy** and carpal tunnel syndrome and ran an EMG in an effort formulate a medical/legal opinion on causation. In this regard, Dr. Sprinkle stated:

... but I would like to do an
EMG to confirm there is no
evidence of **cervical**

radiculopathy as part of his symptoms. He could have a carpal tunnel syndrome, which if found to be so would not be related to his lifting injury, but it would help confirm his symptoms are from that and not from a radiculopathy.

When the EMG turned out to be negative, Dr. Sprinkle said that "I can not find any evidence today to blame it on any phenomenon related to his neck". Dr. Sprinkle gave the claimant a trigger point injection in his neck. In a follow-up visit on March 14, 2006, Dr. Sprinkle indicated that the injection had worsened the claimant's pain and that the numbness in his hand had returned. The claimant wanted to know what was causing the numbness. Dr. Sprinkle opined that this symptom could be due to cubital tunnel syndrome. Again, Dr. Sprinkle offered a medical/legal opinion on causation for this new diagnosis, as follows:

It could be that he is having some intermittent cubital tunnel syndrome. This would not be work related. I have explained this to him. He may want to consider pursuing that through his regular health

care insurance. That could explain his intermittent hand numbness.

On August 4, 2006, the claimant was seen by Dr. Thomas Hart, a physician appointed by the Arkansas Workers' Compensation Commission after a change of physician request. On that date, Dr. Hart noted the claimant's complaints in the cervical spine and said that he needed a repeat MRI since he had not had one since his second on-the-job injury. Dr. Hart found "significant decrease in sensation in the fourth and fifth finger, slightly in the third finger in what appeared to in a C8,C7 distribution"(C7 is the nerve root which would be impacted by a C6-C7 herniated disc). At this time, Dr. Hart thought that these findings represented an ulnar nerve entrapment syndrome as opposed to cervical radiculopathy. The second MRI was performed on August 7, 2006 and showed the same "**disc**-osteophyte complex" at C6-C7 and C5-C6 as was seen on the first MRI. Dr. Hart reviewed the MRI findings and re-examined the claimant on August 25, 2006. After reviewing the second MRI, he made the diagnosis

of **herniated discs at C5-C6 and C6-C7** and referred the claimant for a surgical evaluation, as follows:

The cervical is impressed that he has positive nerve compression signs with what appears to be a **C6 as well as C7 radicular symptom**. He has not had a formal neurosurgical consultation. He basically has been seen by a rehab physician with some trigger point injections which were of no benefit. At this point before any consideration of any interventional procedures, I would like to get him to Dr. Michael Calhoun for a neurosurgical consultation with emphasis on the **cervical herniation mainly at the C5-6,C6-7...**

The claimant was seen by Dr. Calhoun, a neurosurgeon. In his report dated September 8, 2006, Dr. Calhoun noted the same decrease in sensation in the C7 dermatome that was observed by Dr. Hart during his initial examination on August 4, 2006. Dr. Calhoun confirmed the diagnosis of **herniated discs at C5-C6 and C6-C7** and offered the claimant surgery.

On January 4, 2007, the first of two depositions of Dr. Calhoun was taken by respondents' attorney. In that deposition, Dr. Calhoun testified that he actually viewed first-hand the latest MRI of August 7, 2006 and saw two herniated discs, one at C5-C6 and a more significant one at C6-C7. Dr. Calhoun was of the opinion that the claimant could benefit from surgery at both disc levels. When questioned about causation, Dr. Calhoun said that he had only been asked by Dr. Hart to determine whether the claimant was a surgical candidate and that he needed more information to form an opinion on this subject. Dr. Calhoun testified that he had not seen the MRI of July 22, 2005, and that it would be necessary for him to review that study and obtain a more detailed history of the two injuries before he could state his opinion on the causation issue.

After his first deposition, Dr. Calhoun was afforded an opportunity to review the films from both MRIs and to obtain additional historical information concerning the two injuries. Thereafter, he gave his second deposition. In that deposition, Dr. Calhoun testified that

the first MRI showed a disc protrusion (herniation) at C6-C7 with no nerve compromise. The second MRI showed that the disc protrusion had progressed and that it was now compromising the C7 nerve root. It was Dr. Calhoun's opinion, stated within a reasonable degree of medical certainty, that the lifting incident of January 5, 2006 caused the additional disc damage, resulting in the claimant's need for surgery.

Dr. Sprinkle gave deposition testimony as well. He said that he did not believe that the claimant had cervical radiculopathy at the time of his examination because the EMG was normal and because the findings in his hands were more consistent with an ulnar nerve problem as opposed to a problem coming from a cervical nerve root. He also opined that, because the numbness in the claimant's hands would come and go, that there could not be severe damage to a nerve. Most importantly, Dr. Sprinkle's deposition revealed that he reviewed only the MRI films of July 22, 2005 and did not see the films of the August 7, 2006 MRI, or even a report of that study. This MRI is where

the herniated disc in question was first discovered. Dr. Sprinkle admitted that he could not question the opinion of Drs. Hart and Calhoun without seeing the second MRI, as follows:

Q. He has a first MRI. He had one that was done earlier.

A. Correct.

Q. And it covered the first injury, but it didn't cover the second injury?

MR. CALDWELL; I guess just to make sure that the record is clean, there were two --

MR. ETOCH: MRIs.

MR. CALDWELL: -- of the cervical spine that had been done. One was dated July 22, 2005, and another dated August 7, 006, I believe.

MR. ETOCH: That is correct.

MR. CALDWELL: Okay.

MR. ETOCH: And he had one for 2005,

but he didn't have
the one for 2006 to
cover the second
injury.

MR. CALDWELL: And
when you say he, are
you referring to Dr.
--

MR. ETOCH: Dr. Schlesinger.

MR. CALDWELL:
Obviously, Dr.
Schlesinger didn't
have that one.

BY MR. ETOCH:

Q. Is that your
understanding, Dr. Sprinkle?

A. Yes.

Q. Okay. And you did not
have that one, either?

A. Correct.

Q. And since that time, MRIs
have been done by Dr. Hart and
Dr. Calhoun and compared to
the first one in July of 2005;
is that correct?

A. Yes.

Q. Okay. And without looking
at it, you cannot argue with
their opinion?

A. Correct.

During his second deposition, Dr. Calhoun was asked about Dr. Sprinkle's assertion that the normal EMG findings indicated that there was no cervical radiculopathy. Dr. Calhoun explained that significant cervical radiculopathy can exist despite a normal EMG. With regard to Dr. Sprinkle's determination that the numbness in the claimant's hands was related to ulnar nerve problems, Dr. Calhoun pointed out that these symptoms were shown to be related to cervical problems by the second MRI and that ulnar nerve problems were ruled out by the EMG. As stated earlier, Dr. Sprinkle never saw the second MRI. Dr. Calhoun confirmed that the intermittent presence of the numbness in the claimant's hands did not establish that he did not have severe damage to a nerve, contrary to what Dr. Sprinkle had indicated.

In summary, a thorough review of the medical evidence in this case demonstrates that the claimant had no significant cervical spine conditions prior to his compensable injury of September 13, 2004. He passed a pre-

employment physical and his "back, spine" was determined to be normal by the company doctor.

Ever since his admittedly compensable injury of September 13, 2004, the claimant has had considerable difficulty with his back and neck. The first treatment received from the company doctor involved physical therapy and x-rays of his neck. The first treatment by a orthopedic specialist resulted in a diagnosis of a cervical disc herniation. The first MRI showed a disc osteophyte complex at C6-C7 and a herniated disc at C5-C6.

During the above-mentioned treatment, the claimant remained on light duty but continued to suffer from, and be treated for, back and neck problems. The claimant returned to full duty, requiring heavy lifting, on January 2, 2006. Four days later, he sustained his second injury.

Following his second injury of January 5, 2006, the claimant was treated for back and neck problems. As he had previously, the claimant was again experiencing pain and numbness in the arm, hand and fingers. The company doctor sent the claimant to Dr. Sprinkle, an osteopath, who

acknowledged the pain and numbness in the claimant's upper extremity but attempted to attribute these symptoms to non-work-related conditions. First, it was carpal tunnel syndrome. Next, it was cubital tunnel syndrome. And finally, it was an ulnar nerve problem. An EMG study was performed, by Dr. Sprinkle himself, which ruled out these non-work-related conditions.

Dr. Hart was selected by the Arkansas Workers Compensation Commission for a change of physician. Dr. Hart arranged for a second MRI to be performed. After reviewing this study, Dr. Hart concluded that the claimant was suffering from herniated discs at C5-C6 and C6-C7. He referred the claimant to Dr. Calhoun, a neurosurgeon, for surgical evaluation. Dr. Calhoun reviewed the actual films from the two MRIs and concluded that the claimant was suffering from two herniated discs in his neck. He said that the herniated discs, which showed up after the first injury, had been worsened by the second injury and that the claimant could benefit from surgery.

Based on the medical evidence considered above, it is quite obvious that the claimant suffered from damage to the C5-C6 and C6-C7 discs as a direct result of his initial injury of September 13, 2004. It is equally apparent that the second injury of January 5, 2006, aggravated this condition and caused progression of the herniations. Under these circumstances, the causal relationship between his compensable injuries and his cervical disc problems has been established.

Despite overwhelming evidence to the contrary, the Administrative Law Judge found that the claimant failed to establish a causal connection between a second work-related incident and the need for medical treatment. In support of this finding, the Administrative Law Judge makes three factual allegations, all of which are either false or do not support her conclusion on the issue of causation. Firstly, the Administrative Law Judge says that "the opinion of Dr. Calhoun is based solely on the subjective complaints of the claimant". This is simply not true. During his first deposition, Dr. Calhoun refused to state his opinion on this

issue because he did not have a complete history from the claimant and because he had not seen the first MRI and compared it to the second MRI. Only after having all of the relevant information, did Dr. Calhoun opine that the claimant's cervical disc problems were related to his injuries. In addition, Dr. Calhoun performed a thorough examination of the claimant and reviewed the previous medical records. In fact, he was questioned in detail about the claimant's prior medical history during two depositions. Under these circumstances, it was erroneous to conclude that Dr. Calhoun's opinion was based solely on the claimant's subjective complaints.

The second fact relied upon by the Administrative Law Judge to invalidate the causal relationship between the claimant's injuries and his cervical disc problems was that the claimant had suffered from similar symptoms for an extended period of time prior to his injury of January 5, 2006. This fact is true, but does not support the Administrative Law Judge's finding on causation. As was demonstrated earlier, the evidence establishes that the

claimant initially injured his cervical discs on September 13, 2004, and later suffered additional injury to those discs on January 5, 2006. Of course, he had suffered from similar symptoms before January 5, 2006. This fact does not support the Administrative Law Judge's decision.

And finally, the Administrative Law Judge concludes that there were no objective finding to support the existence of a compensable injury as required by Ark. Code Ann. §11-9-102(4)(D). In so concluding, she says that the MRI results showed no objective findings other than degenerative changes. This is simply not the case. As pointed out earlier, Dr. Calhoun was the only doctor to look at both MRIs and compare them. He saw disc herniations on the first MRI and an objective worsening of those conditions (further herniation) on the second MRI. These cervical disc herniations were attributed to the two injuries. Under these facts, it can not be said that there were no objective findings to support the injuries.

Although the Administrative Law Judge did not even mention his name in her analysis of compensability, the

respondents rely heavily on the opinions of Dr. Sprinkle in their arguments concerning causation. They contend that Dr. Sprinkle said that, during his treatment, the claimant was not suffering from cervical radiculopathy, the primary indicator of a herniated disc in his neck. The respondents argue that because the claimant did not have these symptoms at this time, the herniations could not be related to his injury of January 5, 2006. The medical evidence does not support the conclusions reached by Dr. Sprinkle. While Dr. Sprinkle said that there was no evidence of cervical radiculopathy during his treatment of the claimant, he acknowledged the presence of classic radicular symptoms of pain and numbness in the claimant's upper extremity. From the beginning, Dr. Sprinkle observed signs of cervical disc problems but attempted to explain them away by attributing the symptoms to other non-work-related conditions. Dr. Sprinkle, at various times, proposed non-work-related carpal tunnel syndrome, cubital tunnel syndrome, and ulnar nerve damage to explain the claimant's symptoms. Each one of these conditions was ruled out by Dr. Sprinkle's own

diagnostic studies. And most importantly, Dr. Sprinkle never saw the second MRI which finally revealed the cause of the symptoms in the claimant's arm, hand, and fingers. In fact, he never even saw the radiologist's report of that study. This fact forced Dr. Sprinkle to admit that he was not in a position to question the conclusions reached by Drs. Hart and Calhoun.

As discussed in detail earlier, the opinion of Dr. Calhoun was diametrically opposed to that of Dr. Sprinkle. Dr. Calhoun's opinion should be given greater weight, not only because he had more information than Dr. Sprinkle, but because of his field of expertise. With regard to whether or not the claimant was experiencing cervical radiculopathy, this was a medical question involving expertise in spinal nerves, the expertise of a neurosurgeon. Dr. Calhoun is a neurosurgeon. Dr. Sprinkle is an osteopath and the record contains no evidence that he possesses any particular expertise in the area of medicine dealing with spinal nerves. Therefore, Dr. Calhoun's opinion should have been afforded greater weight.

In conclusion, the facts of this case strongly support a finding that the claimant proved a causal relationship between his injuries and the development of cervical disc problems. The facts upon which the Administrative Law Judge based her denial are either false or are facts which do not support her conclusions. Therefore, the Administrative Law Judge's finding on causation should have been reversed.

For the above stated reasons, I must respectfully dissent from the majority opinion.

PHILIP A. HOOD, Commissioner