

## NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F611866

NATHAN WOODRUFF,  
EMPLOYEE

CLAIMANT

SHAVER FOODS,  
EMPLOYER

RESPONDENT

CANNON COCHRAN MANAGEMENT SERVICES,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED MARCH 31, 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 May 29, 2007. In said  
order, the Administrative Law Judge made the following  
findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at  
the pre-hearing conference conducted on February  
28, 2007, and contained in a pre-hearing order  
filed that same date, are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance  
of the evidence that he suffered a compensable

injury to his lumbar spine while employed by the respondent.

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 May 29, 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.

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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's opinion. The majority, by affirming and adopting 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 lumbar 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 lumbar spine on July 19, 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. If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

I find that the claimant has proved by a preponderance of the evidence that he sustained a compensable specific incident back injury on July 19, 2006. First, I find that the claimant proved by a preponderance of the evidence that his back 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). In Edens v. Superior Marble & Glass, 346 Ark. 487 (2001), the Arkansas Supreme Court held that "identifiable by time and place" meant subject to identification and did not require the claimant to specify the exact time of the occurrence. Here, the claimant's credible testimony clearly establishes that his back injury was the result of a specific incident arising out of and in the course of his employment. The claimant testified that on July 19, 2006 he injured his back while carrying three cases of spaghetti sauce to be loaded on to a pallet. The claimant testified that he was already carrying one case of spaghetti sauce on each shoulder when co-worker C.J. Kilpatrick placed another case of spaghetti sauce on top of his right shoulder. The claimant testified that as Mr. Kilpatrick shoved the additional case onto his shoulder, he was forced to step backward, and as he did so, his right heel hit an unloaded pallet on the floor. The claimant testified

that he then fell to a seated position. The claimant testified that, while he immediately felt pain in his back, to the point that he called his supervisor, Mr. Brannon Nix to tell him about it, he was able to complete his shift.

The claimant's credible testimony as to the occurrence of his back injury is not, as the majority found, contradicted by C.J. Kilpatrick's testimony but is, in fact, corroborated by the testimony of Mr. Kilpatrick. As Mr. Kilpatrick testified, the respondent's warehouse was a busy place and the workers were moving swiftly to fill orders and build pallets from the warehouse inventory. According to both the claimant's and Mr. Kilpatrick's testimony, even though they were working on the same task, they were separated from each other by a pallet of inventory which stood 62 inches tall. I find it to be entirely reasonable that after loading the claimant up with the cases of spaghetti sauce, Mr. Kilpatrick turned away to continue his job, on the other side of the pallets, which would place the claimant out of Mr. Kilpatrick's line of sight. Furthermore, based on Mr. Kilpatrick's testimony, I find it to be reasonable that Mr.

Kilpatrick would not have heard a crash from the accident because of ambient noise present in the warehouse.

The majority also errs by placing great weight on the testimony of the claimant's supervisor. The claimant testified that he called Mr. Nix twice on the night of July 19, 2006. In his deposition, Mr. Nix testified that he never received a telephone call after the injury or after the claimant went to the doctor. Mr. Nix's testimony is directly contradicted by the mobile phone records introduced by the claimant. The mobile phone records show that Mr. Nix did receive telephone calls from the claimant during claimant's shift on July 19, 2006. Additionally, contrary to Mr. Nix's testimony, the mobile phone records show that Mr. Nix received a telephone call eight minutes after the claimant visited his doctor on July 20, 2006. When there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. White v. Gregg Agricultural Ent., 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission is not required to believe the testimony of the claimant or any other witness, but may

accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. Id. I find Mr. Nix to be, at best, a witness with poor recollection of the facts, and the majority should not have given his testimony more weight than the credible testimonies of the claimant and Mr. Kilpatrick.

Second, the claimant has shown internal physical harm supported by objective medical findings. Objective medical findings are defined as findings that cannot come under the voluntary control of the patient. Continental Express, Inc. v. Freeman, 66 Ark. App. 102, 989 S.W.2d 538 (1999). Here, the claimant credibly testified that on July 20, 2006, he went to Dr. Kendrick, who diagnosed the claimant as having two herniated discs at levels L4-5 and L5-1 on July 27, 2006 using an MRI. Therefore, I find that the claimant has shown by a preponderance of the evidence that an injury occurred which caused internal or external physical harm to his body and which required medical treatment.

While the majority apparently acknowledges that the claimant has presented objective findings of two herniated discs, the majority has erred by focusing on the fact that the initial medical exam mentions an

injury onset of 14 days prior to the date of the exam, July 20, 2006. The majority appears to find that as the initial medical report shows an onset date 14 days prior to July 20, 2006, that the claimant must have herniated two discs in his spine prior to his claimed date of injury. However, the respondent's argument is not reasonable. The claimant and Mr. Kilpatrick both credibly testified as to their job duties. The claimant credibly testified that he was able to perform all of his job duties up until the night of June 19, 2006, when he was injured lifting the cases of spaghetti sauce. 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). I find, based on the evidence of record, that it is reasonable to determine that the claimant's injury was not 14 "days" but rather 14 "hours" prior to the doctor visit, which would place the

onset of the injury during claimant's shift at respondent's warehouse. As the respondent testified that during the time period in question the respondent actually gave the claimant a raise in pay for his dutiful service, I find it to be unreasonable to conclude that the injury occurred 14 days before and not on the date of the injury reported by the claimant.

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, therefore, the Full Commission should reverse the decision of the Administrative Law Judge.

For the aforementioned reasons, I must respectfully dissent.

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PHILIP A. HOOD, Commissioner