

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F709219

BILLY BEAN, EMPLOYEE	CLAIMANT
HANES BRANDS, INC., EMPLOYER	RESPONDENT NO. 1
AIG CLAIMS SERVICES, INC., CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED JUNE 22, 2009

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

Claimant represented by HONORABLE SUSAN WALKER ALLEN, Attorney at Law, Russellville Arkansas.

Respondent No. 1 represented by HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by HONORABLE DAVID PAKE, 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 12, 2008.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on April 16, 2008, and contained in a pre-hearing order filed April 17, 2008, are hereby accepted as fact.

2. That the difficulties of the claimant are a reoccurrence of his prior cervical problems and not an aggravation.

3. That the claimant failed to prove by a preponderance of the evidence that he suffered a compensable injury on July 15, 2007.

4. That the claimant is not entitled to any benefits in this matter.

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.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the claimant clearly sustained a specific incident injury on July 15, 2007. The majority's conclusion that the claimant's injury is a recurrence of a prior neck condition is not supported by the evidence of record, and therefore, I must respectfully dissent.

The claimant had worked at Hanes Brands in Clarksville since March 1996. His position was a knitter. His job was that of hanging yarn which was used to make the panty hose and to make sure the yarn went through the machines so that the machines worked properly. His job was not a yarn hanger, but when they were short-handed, he had to get the boxes of yarn out of the warehouse, get on a ladder, and hang the bobbins of yarn. The bobbins of yarn he would be lifting weighed between 12-20 lbs. each.

The claimant has a prior neck injury, for which he underwent an anterior fusion on C5-6 on February 2, 2007 at St. Vincent Infirmary, performed by Dr. Ron Williams. A report from the claimant's physical therapist, dated March 13, 2007, after the claimant's first surgery expresses concern about the claimant's job duties:

The patient works at Hanes and makes pantyhose. He reports that he has to do maximal amounts of cervical flexion and extension with his job; therefore, Dr. Williams has not put him back to work until the end of the month.

Despite having had a neck surgery and working in a neck-movement intensive job, the claimant returned to work on March 21, 2007, with no restrictions, and was essentially symptom-free from March until the end of June. The claimant did testify that he was having some lingering pain from the first surgery, however, there is no evidence that he was seeing any doctor or having any therapy. He was doing his job without any prescribed medicine or doctor's visits. He was working 8-hour days, 7 days a week.

On July 17, 2007, claimant testified that he lost the feeling in his left arm when he was hanging the yarn about two hours into his shift. He started work at 3:30 p.m. and the injury occurred about 5:30 p.m. He got hurt trying to put a bobbin of yarn up top. When he grabbed the bobbin of yarn, he stepped up on the little step stool and reached up to try to put the yarn up there. He got it about halfway on, and his left arm started going numb, and the next thing he knew, he was dizzy. The pain shot right through his shoulders and straight up his neck. The bobbin was still hanging halfway on. He grabbed a hold of the

ladder, just standing there trying to catch his balance. He stepped down so he would not completely fall. His wife saw him and got a hold of him. Justin and Brandon, his co-workers, got a wheelchair for claimant. He sent Faith, his checker, to get Stanley Nesbitt, because the nurse was not there. Mr. Nesbitt came out and claimant told him that he was hurt. Claimant told him his arm had gone numb and he had pain across his back and up his neck.

His wife called his chiropractor, Dr. Snider, and claimant told him his arm was numb and that he had a sharp pain across his shoulder and up his neck. He saw Dr. Snider at 8:00 a.m. the next day and reported the work accident to him. The doctor gave him a note for work and he gave it to his wife to take to work. Dr. Snider took him off work for a week and he saw Dr. Schlesinger and he kept him off work, as well. Dr. Snider had also treated claimant for the previous injury in October 2006.

On July 25, 2007, Dr. Schlesinger's report states that Dr. Williams had done a C5-6 AFC on the claimant. The x-rays revealed degenerative changes and shows post-operative changes at C5-6. There seems to be a C6-7 left-sided disc herniation, and the doctor is going to do a myelogram/CT scan of the cervical spine to better define the anatomy and plan for potential surgical intervention.

On August 8, 2007, Dr. Schlesinger had a diagnosis that the myelogram/CT scan supports the MRI findings of a C6-7 left-sided disc herniation and foraminal stenosis, requiring surgical intervention, a C6-7 anterior cervical decompression and fusion with bone graft. Operating Room records show that Dr. Schlesinger performed an anterior cervical fusion at C6-7 on August 21, 2007.

In workers' compensation law, an employer takes the employee as he finds him, and employment circumstances that aggravate pre-existing conditions are compensable. Heritage Baptist Temple v. Robison, 82 Ark. App. 460, 120 S.W. 3d 150 (2003). An aggravation of a pre-existing non-compensable condition by a compensable injury is itself compensable. Oliver v. Guardsmark, 68 Ark. App. 24, 3 S.W.3d 336 (1999). An aggravation is a new injury resulting from an independent incident. Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W. 3d 900 (2000). An aggravation, being a new injury with an independent cause, must meet the definition of a compensable injury in order to establish compensability for the aggravation. Farmland Ins. Co. v. Dubois, 54 Ark. App. 141, 923 S.W. 2d 883 (1996). Ark. Code Ann. §11-9-102(4) (A) (Repl. 2002) defines "compensable injury":

(i) An accidental injury causing internal or external physical harm to the body...arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4) (D). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16) (a) (i). Here, the claimant has clearly proved all of the elements of a compensable specific incident injury. Between March 2007 and the reported July 15, 2007 injury date, the claimant was working his full-time job, 6 to 7 days per week, with no trips to the doctor, no complaints to the plant nurse, and requesting no special restrictions. The only basis for the Administrative Law Judge's determination that this injury was a recurrence injury, affirmed and adopted by the majority, is a notation by Dr. Schlesinger that the claimant's neck had been bothering him for about the last month. However, any pain the claimant may have been experiencing before the date of injury did not cause him to go to the nurse or go to a doctor. On the date of injury the

claimant had to be wheeled out of the plant in a wheelchair with tears streaming down his face, which I find to be clearly indicative of pain of a different nature than any lingering pain after the first surgery.

In conclusion, I find that the claimant has sustained a specific incident aggravation of a pre-existing neck condition. There is simply not substantial evidence to support the Administrative Law Judge's conclusion, affirmed and adopted by the majority, that the claimant's injury is a recurrence. For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner