

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F701096

CHARLES J. CAMPBELL, EMPLOYEE	CLAIMANT
ROCKLINE INDUSTRIES, EMPLOYER	RESPONDENT
VALLEY FORGE INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

ORDER FILED JANUARY 6, 2009

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

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

Respondent represented by HONORABLE MICHAEL ALEXANDER,
Attorney at Law, Little Rock, Arkansas.

NUNC PRO TUNC ORDER

The Full Commission, on its own motion, finds that a clerical error exists in the Opinion and Order filed December 22, 2008. The Opinion and Order reflects another case on file with the Commission sent in error. The Full Commission finds that the Opinion and Order should reflect the correct Dissenting Opinion of Commission Hood as follows:

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 proved that he suffered a compensable injury to his cervical spine on January 9, 2007, and is entitled to reasonable and medical treatment of that compensable injury as well as temporary total disability benefits from February 9, 2007 through May 24, 2007, 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. Sec. 11-9-103(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. Sec 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. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

First, I find that the claimant has proved that his injury was caused by a specific incident arising out of and in the course of his employment. The claimant consistently described the circumstances of his injury to his wife, the supervisory personnel at Rockline and his medical providers, explaining that a singular event occurred, in which he turned his neck, which was already turned far in order to see behind him, even further when he heard a pop and experienced pain, while he was performing employment services. He was able to state the time and date of the event, and exactly what he was doing at the time.

Accordingly, I find that the claimant's consistent description of the time, location, and mechanism of his injury, his testimony that he reported the event of his neck

popping to Quillan and Fanning, his consistent testimony of difficulty with his neck and shoulder, and his subsequent re-reporting of his difficulties, are sufficient evidence to show both a causal relationship and a temporal relationship between the event and the need for treatment. 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). The Arkansas Workers' Compensation Act does not require an immediate diagnosis. See Siders v. Southern Mattress Co., 240 Ark. 260, 398 S.W.2d 901 (1966). The court has stated that if "months" have passed between an accident and the manifestation of an injury, reasonable men might disagree about the existence of a causal connection. See Kivett v. Redmond Co., 234 Ark. 855, 355 S.W.2d 172 (1962); Wentz v.

Servicemaster, 75 Ark. App. 296, 57 S.W.3d 753 (2001).

Certainly, two weeks between the date of injury and the date of a request for treatment is sufficiently brief to maintain a causal connection.

Furthermore, the testimony of Dr. Standefer links the event, rotation of the claimant's neck, to the objective findings and the claimant's complaints. Dr. Standefer stated: ". . . if the onset of the claimant's pain occurred as he described it to me, that physical activity is consistent with having caused the problem for which I treated him." Further bolstering the causal connection, Dr. Standefer further stated that it was his opinion, within a reasonable degree of medical certainty, that the claimant's job-related activity was the major cause for Mr. Campbell's need for treatment. The respondents' evidence to the contrary, consisting of testimony of two employees at risk of disciplinary action if they admitted that the claimant had indeed mentioned the "popping" incident the next day, simply fails to outweigh the claimant's evidence.

The majority, by affirming and adopting the Administrative Law Judge, gives greater weight to the testimony of two respondent employees regarding when the claimant reported his injury, than to the testimony of the claimant. However, the majority has failed to consider that the respondent employees are interested parties, and as such, their testimony must be considered to be controverted. See Continental Express v. Harris, 61 Ark. App. 198, 965 S.W.2d 811 (1998). By crediting only the testimony of the respondent witnesses, the majority has, in fact, arbitrarily disregarded the testimony of the claimant. When resolving conflicting evidence, the Commission may not arbitrarily disregard the testimony of any witness. Coleman v. Pro-Transportation, 97 Ark. App. 338, 249 S.W.3d 149 (2007); Foxx v. American Transp., 54 Ark. App. 115, 924 S.W.2d 814 (1996).

Here, the claimant testified that he reported the injury the next day to Quillan and Fanning, and that Quillan commented that the same thing happened to her. In particular, the claimant stated that he told them his neck

popped. He acknowledged that it was the responsibility of the employees to report on-the-job injuries. He also stated that he did not think that the incident was going to amount to much.

To the contrary, all of the employer witnesses emphasized the company policy to report every last injury, no matter how insignificant. Quillan and Fanning testified that they were subject to discipline if they were aware of an injury and did not make sure it was reported to the appropriate person. Certainly, Quillan and Fanning have a significant interest here, because if they admitted that the claimant mentioned the incident regarding his neck, then they would be subject to discipline. Their self-serving testimony does not hold up to the claimant's testimony, especially since the claimant's explanation of the incident has been consistent in all of the evidence of record.

I find it reasonable to determine that since the claimant did not recognize the significance of his injury at the time of the injury, neither did Quillan nor Fanning recognize the significance of the claimant's statement or

the claimant's injury. The claimant freely admitted that at the time that he mentioned the incident and injury to Quillan and Fanning he did not think anything would come of it. Furthermore, the claimant's testimony that Quillan commiserated with him about neck pain or popping is consistent with the conclusion that the claimant, Quillan and Fanning all underestimated the significance of the neck popping.

Additionally, I would note that Fanning's testimony that he was reprimanded and ridiculed for the claimant's failure to follow the reporting procedure for the prior leg injury, an injury that Fanning also testified he was unaware of, is contradictory, and impacts on Fanning's credibility. Therefore, I simply cannot credit Fanning's testimony that if the claimant had mentioned anything about an injury he would have reacted immediately.

I find that contrary to the testimony of the respondent witnesses, the claimant's testimony is consistent throughout all of the evidence of record. The claimant has consistently reported to medical providers and at the

hearing his symptoms including pain, numbness, stiffness, and difficulty sleeping. This was corroborated by his wife's testimony at the hearing. The claimant testified that on the day of the incident and the day after, he did not think that the injury would amount to much. However, within two weeks, his symptoms had caused him to go to his employer a second time, this time to seek treatment. The claimant testified at the hearing that between the injury and his first doctor's visit, he "got to getting stiffer and hurting and ... that nerve was coming in that finger and this whole hand was getting numb." There is simply no justification for the majority's apparent total disregard of the claimant's credible testimony.

In conclusion, based upon my de novo review of the entire record, I find that the claimant proved by a preponderance of the evidence that he suffered a compensable injury in the form of nerve compression syndrome or radiculopathy to his right neck on January 9, 2008, when he over-rotated his neck while driving a forklift in the performance of employment services. I find that the

claimant is entitled to all reasonable and necessary medical benefits and temporary total disability benefits from February 1, 2007 to May 24, 2007.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner

The Full Commission is authorized to correct clerical errors and this is a proper case for exercise of that authority. Ark. Code Ann. § 11-9-713(d) (Repl. 1996).

The Opinion and Order filed on December 22, 2008, is hereby modified only to include the correct Dissenting Opinion of Commissioner Philip A. Hood. In all other respects, the Opinion and Order shall remain the same and shall not be otherwise affected.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner