

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F807968

DALE FULLER,
EMPLOYEE

CLAIMANT

MILLAR, INC.,
EMPLOYER

RESPONDENT

NEW HAMPSHIRE INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED NOVEMBER 30, 2009

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

Claimant represented by the HONORABLE STEVEN R. MCNEELY,
Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE JARROD S.
PARRISH, 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 June 10, 2009. 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. The employer/employee/carrier relationship existed on or about August 4, 2008, when the claimant contends he sustained a compensable back injury
3. Claimant has not proven by a preponderance of the evidence that he sustained a compensable

injury to his lumbar spine as a result of his employment with Millar, Inc. on August 4, 2008.

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 compensable injuries that are governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injuries are, indeed, injuries that are covered by the Act; however, the claimant has failed to establish the elements necessary to prove these compensable injuries by a preponderance of the evidence.

Therefore we affirm and adopt the June 10, 2009 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's opinion. The majority, by affirming and adopting the Administrative Law Judge, finds that the claimant has not proven by a preponderance of the evidence that he sustained a compensable injury to his lumbar spine as a result of his employment with the respondent on August 4, 2008. Based upon a de novo review of the record, I find that the claimant has met his burden of proof by a preponderance of the evidence for a compensable specific incident lumbar spine injury, 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. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

I find that the claimant's credible testimony supported by the medical record shows that his lumbar spine injury manifested almost immediately after the employment incident. The findings of the Administrative Law Judge on the issue of credibility are not binding on the Commission. Roberts v. Leo-Levi Hospital, 8 Ark. App. 184, 649 S.W.2d 402 (1983); Linthicum v. Mar-Bax Shirt Co., 23 Ark. App. 26, 741 S.W.2d 275 (1987). Indeed, the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. Coleman v. Pro-transportation, 97 Ark. App. 338, 249 S.W.3d 149 (2007). The claimant testified that on

August 4, 2008 he was trying to unhook a diesel tank from the front end of a backhoe when:

I was snatching the pin, and it-the ground was unlevel and the pin was hard to get out, and I must have snatched it seven, eight, ten times, but I finally got it snatched out, and then I felt a sharp pain down my right leg and-and my right side...

The claimant testified that the pain was fleeting so he didn't think much about it until he went home. At home the pain returned. The claimant testified that he told his wife he was going to try to get through the night and as soon as a clinic was open in the morning he would be there.

The medical record shows that the claimant reported to Dr. James Young on August 5, 2008 complaining of lower back pain. The claimant returned to Dr. Young on August 8, 2008 with lower back pain not improved since August 5, 2008. On August 26, 2008 Dr. Young diagnosed the claimant as having a lumbar strain. An MRI taken on October 1, 2008 showed:

...The vertebral body heights and disc spaces are well-maintained. The distal spinal cord and thecal sac appear normal. Facet joints appear within normal limits. No intra or extradural lesion is seen. The neural foramina appear normal. There is some degenerative change with

bulging of the disc anteriorly at
T12-L1 and L1-L2...

The claimant returned to Dr. Young on October 16, 2008. Dr. Young noted the bulging discs and stated that the claimant needs physical therapy and prescribed Flexeril and Mobic. On February 3, 2009 the claimant returned to Dr. Young with the same complaints and was referred to Dr. P.B.Simpson at South Arkansas Neurosurgery Associates.

On February 23, 2009 Dr. Simpson stated: I saw this gentleman because he had a work related injury. He stated this happened on August 4, 2008. He had immediate pain with this and I assume that that was the etiology of his problem according to his history; however there is no way that I can be absolutely be sure of that...

I find, based on the medical record, that the claimant sustained a lumbar strain injury. Based on the claimant's credible testimony, bolstered by Dr. Simpson's opinion that the injury most likely occurred as claimant described, I find that the injury occurred on August 4, 2008, while the claimant was trying to unhook a diesel tank. Although Dr. Simpson's opinion is not stated with the magic words "within a reasonable degree of medical certainty" his opinion clearly shows that Dr. Simpson was of the opinion that the claimant's

lumbar injury was due to the incident at work on August 4, 2008. I find no evidence in the record to contradict the claimant's description of how the accident occurred. Although the two people working with the claimant when the incident occurred did not witness the incident, no one disputes that the claimant was working on a diesel tank on August 4, 2008. The claimant reported for medical treatment the very next day complaining of lower back pain, which was later diagnosed as a lumbar strain. Furthermore, the claimant's supervisor, Mr. Steven Shuck, corroborated the claimant's testimony that the claimant was unable to work the day after the incident, and reported back pain to him, eventually asking Mr. Shuck to report a work-related injury.

In conclusion, I find the claimant to be a credible witness. His testimony is corroborated by the medical record. For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner