

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F505201

DOUGLAS W. KING, EMPLOYEE

CLAIMANT

CITY OF LITTLE ROCK,  
A SELF INSURED EMPLOYER

RESPONDENT

**OPINION FILED MARCH 24, 2009**

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

Claimant represented by HONORABLE JIM JACKSON, Attorney at Law, Bryant, Arkansas.

Respondent represented by HONORABLE BETTY J. HARDY, 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 April 7, 2008.

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

1. There was an employer-employee relationship on December 1, 2004.
2. The compensation rates are \$453/340.
3. The claimant proved by a preponderance of the evidence that he sustained a temporary aggravation to his pre-existing back condition. The

temporary aggravation had resolved by April 25, 2005.

4. The claimant has failed to prove that additional medical was reasonable and necessary and specifically related to the December 1, 2004, vehicle accident.

5. The claimant has failed to prove by a preponderance of the evidence that he remained in his healing period and unable to earn wages because of his compensable injury from April 25, 2005 to October 16, 2006.

6. The claim for additional benefits is respectfully denied and dismissed.

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.

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A. WATSON BELL, 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 April 7, 2008 opinion of an Administrative Law Judge, finds that the claimant failed to prove that medical treatment related to his December 1, 2004 motor vehicle collision was reasonable and necessary. Based on a de novo review of the record, I find that the claimant did prove that the medical treatment was reasonable and necessary and, therefore, I must respectfully dissent.

\_\_\_\_\_ The claimant is a Little Rock police officer and has worked for the respondent since 1981. At the time of the compensable injury on December 1, 2004, the claimant worked for the Little Rock Police Department as a patrolman. The injury occurred when the claimant's patrol car was rear-ended by another vehicle.

After the motor vehicle collision, the claimant immediately presented to Baptist Hospital Emergency Room and was treated by Dr. Evelyn Young. In the emergency room, the claimant complained of pain in his lower back, among other areas of his body. The claimant complained that his back was "pulsating." He was given pain pills and muscle relaxers. Later, the claimant complained of back problems on December 8 and 19, 2004 and went to Dr. Brenda Covington on December 20, 2004. The claimant was assigned physical therapy, but continued to complain of back pain. After being sent for an MRI, the report from January 27, 2005 indicated disk bulges at the L3-4 and L4-5 levels. The claimant next saw his family doctor, Dr. Kent Davidson, and was referred to Dr. Zachary Mason and Dr. Amir Qureshi, where he received

a steroid injection and muscle relaxers. Medical records show that the claimant complained of back pain in 2005 on April 11, June 3, July 26, September 1, 23, November 21, December 2, 7, 23, and in 2006 on January 17, 25, 31, February 17, 27, March 9, 23, April 4, 13, May 1, 8, and August 17. The injury eventually required back surgery, which was performed by Dr. Mason on September 1, 2006.

The majority, by affirming and adopting the Administrative Law Judge, finds that the claimant's injury was a "temporary aggravation of a pre-existing back injury" which had resolved on April 25, 2005. By affirming and adopting this opinion, the majority has misinterpreted the law and misread the facts.

Case law provides that an aggravation of a preexisting condition is compensable. Ford v. Chemipulp Process, Inc., 63 Ark. App. 260, 977 S.W.2d 5 (1998); Public Employee Claims Div. v. Tiner, 37 Ark. App. 23, 822 S.W.2d 400 (1992); Nashville Livestock Comm'n v. Cox, 302 Ark. 69, 787 S.W.2d 664 (1990). When a preexisting injury is aggravated by a later compensable injury, compensation is in

order. McMillan v. U.S. Motors, 59 Ark. App. 85, 953 S.W.2d 907 (1997). The general rule is that the employer takes the employee as he finds him, and the employment circumstances that aggravate preexisting conditions are compensable. Public Employee Claims Division v. Tiner, 37 Ark. App. 23, 822 S.W.2d 400 (1992). Here, the claimant's back injury was confirmed by the very first MRI he received on January 27, 2005, which indicates disk bulges at the L3-4 and L4-5 levels. In addition to the disk bulges from the MRI, the February 21, 2005 medical report from Dr. Kent Davidson noted "evidence of degenerative disk disease", which the majority interprets as a pre-existing condition. However, the existence of degenerative disk disease would not preclude the medical treatment the claimant received as reasonable and necessary. The claimant was able to perform his job duties prior to December 1, 2004 without complaint of his current injuries. After December 1, 2004, the claimant required injections, medications, and treatment and occasionally worked light duty or not at all. Furthermore, during the time which the Administrative Law Judge states

the back injury had resolved, the claimant presented to medical professionals with complaints of back pain on no less than 21 occasions. It is difficult to comprehend how an injury can "resolve" and then require 21 subsequent visits to medical professionals with consistent complaints of identical pain. Similarly difficult to believe is how an aggravation of a pre-existing condition, despite years of case law from our Supreme Court and Court of Appeals to the contrary, can be said to be non-compensable. The claimant's treatment subsequent to April 25, 2005 clearly reflects a course of treatment meant to address his complaints of back pain, and therefore, I would find that the treatments were reasonable and necessary.

In conclusion, I find that the claimant has proven that medical treatment related to his December 1, 2004 motor vehicle collision was reasonable and necessary. For the aforementioned reasons, I must respectfully dissent.

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PHILIP A. HOOD, Commissioner