

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F603153

DALE MILLER, EMPLOYEE	CLAIMANT
MAVERICK TRANSPORTATION, A SELF INSURED EMPLOYER	RESPONDENT
NORTH AMERICAN RISK SERVICES, TPA	RESPONDENT

OPINION FILED JULY 9, 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 JAMES A. ARNOLD, II,
Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the
Administrative Law Judge filed October 28, 2008.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates including March 7, 2006, the relationship of employee-self insured employer-third party administrator existed between the parties.

3. On all relevant dates, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$488.00 for total disability and \$366.00 for payment partial disability, should such benefits have been appropriate.

4. The claimant has failed to prove by the greater weight of the credible evidence that he sustained a "compensable injury" to either his neck (cervical spine) or back (lumbar spine) which was the result of either a specific employment related incident on March 7, 2006, or was the result of cumulative employment related stress or trauma over time. Specifically, the claimant has failed to prove a specific employment related incident on March 7, 2006, or that his employment related activities for this respondent in general were a likely or probable cause of any physical defect or damage involving his neck (cervical spine) or back (lumbar spine).

5. The respondent has denied the occurrence of any compensable injury to the claimant's back or neck and has controverted this claim in its entirety.

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 that is covered by the Act; however, the claimant has failed to establish the

elements necessary to prove a compensable injury by a preponderance of the evidence.

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 has proved by a preponderance of the evidence that he sustained a compensable specific incident injury to the neck on March 7, 2006 and I would award benefits accordingly. Therefore, I must respectfully dissent.

The claimant worked for the respondent as an over-the-road truck driver. On March 7, 2006, the claimant picked up a load weighing 42,548 pounds. He was dispatched to deliver the load to a location in Illinois. The claimant testified that he secured the load by putting 4x4s on the deck of the trailer and making sure they positioned the steel bars where they needed to be and then he secured them with chains and binders and straps. The claimant testified that the chains weighed probably 25 to 30 pounds a piece, and that he would fasten them on one side of the trailer and pick up the rest of the chain and throw it up over the trailer to the other side. A. J. Cathey, the Operations Manager, confirmed that the load in question would involve using chains and that the chains would probably weigh 20 to 30 pounds. He confirmed that standing on one side of the trailer and throwing the chain over to the other side would be one way of chaining down the load.

The claimant testified that chaining down the load was the only physical activity that he had done prior to leaving on the March 7, 2006 trip. He testified that he had not engaged in any physically demanding activity away from work for at least 24 hours prior to the trip and he had not engaged in any physically demanding activity between chaining down the load and the onset of his symptoms.

The claimant testified that he was actually driving when he started experiencing symptoms. The longer he drove, the worse he got. The claimant testified that he called Maverick at 7:00 a.m. on March 8 and reported his condition. The claimant's phone log actually indicates that the call was made at 7:11 a.m. on March 8. Also, Maverick's logs show they received a call from Miller at 7:12 a.m. on March 8, and their records note that he told them that he was having problems with his arms and legs. Thus, there is absolutely no dispute that the claimant advised Maverick that he was having problems with his arms and legs on the very next morning after he had chained down a load of steel for Maverick. There is no indication in the record that Miller was involved in an accident or engaged in any physical activity more demanding than chaining down the load during the period in question. There is no testimony or

medical evidence that the claimant told anybody that he got hurt anywhere other than working for Maverick Transportation.

When the claimant went to the Emergency Room on March 9, 2006, he told them he had been having problems with his legs for two days. Also, the Emergency Room Report indicates a chief complaint of neck pain, two days. Although the evidence indicates that the claimant had had some problems with numbness in his hands and arms prior to March 7, 2006, the Emergency Room note clearly related the problems with the claimant's legs and his chief complaint, neck pain, to a two day onset.

The March 9, 2006 Emergency Room Report indicates no recent injury; however, the claimant explained that he thought that the Emergency Room personnel was asking him whether he had had an injury after the onset of his symptoms. He simply misunderstood the question. There is no reasonable way to interpret the Emergency Room records, other than to conclude that the claimant's chief complaint, neck pain, had existed for two days, and that his leg problems had existed for two days. The claimant does not dispute that he had some prior numbness in his hands and arms.

The activity of throwing the chains over the trailer and chaining the load down are admittedly activities in which the claimant engaged on March 7, 2006. The very next morning, he reported symptoms that are commonly associated with a herniated disc in the cervical spine. The following day, March 9, he presented to the Emergency Room with a history of numbness in his legs for two days and a chief complaint of neck pain for two days.

Regardless of the fact that the claimant had had some numbness and tingling in his upper extremities prior to March 7, 2006, the temporal relationship of him throwing the chains over the trailer and chaining the load down and the onset of the symptoms that caused him to seek medical treatment are so close in time, that I find that the claimant has proved by a preponderance of the evidence that his job activities on March 7, 2006 caused his specific incident neck injury.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner