

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F801686

JAMES DYSON,  
EMPLOYEE

CLAIMANT

SEARCY WATER & SEWER SYSTEM,  
EMPLOYER

RESPONDENT

BRIDGEFIELD CASUALTY INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED MAY 24, 2010

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

Claimant appears Pro Se.

Respondent represented by the HONORABLE MICHAEL RYBURN,  
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 December 22, 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 the within claim.

2. The employee-employer-carrier relationship existed at all other relevant times, including February 7, 2008.
3. The date of the alleged incident is February 7, 2008.
4. The claimant's compensation rate for temporary total disability is \$522.00, and his permanent partial disability is \$392.00.
5. All other issues are reserved under the Act.
6. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his back, arising out of and in the course of his employment with the respondent-employer on February 7, 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 December 22, 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.

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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 opinion. After a de novo review of the record, I would not deny benefits. I would remand this claim back to the Administrative Law Judge. The issue in this claim is aggravation versus recurrence. A recurrence is not a new injury, but merely another period of incapacitation resulting from a previous injury. Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W. 3d 900 (2000). A recurrence exists when the second complication is a natural and

probably consequence of a prior injury. Id. An aggravation is a new injury with an independent cause and, therefore, must meet the requirements for a compensable injury. Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 s.W.3d 900 (2000); Ford v. Chemipulp Process, Inc., 63 Ark. App. 260, 977 S.W.2d 5 (1998). Here, the medical records and the testimony in the record regarding the 2008 injury are completely enmeshed with a 2006 work-related injury to the same body part. In my opinion, as the issue is aggravation versus recurrence, it is improper to address the 2008 injury without addressing the 2006 injury.

Ark. Code Ann. §11-9-704 (b) (3) states: "If any party is not represented by a lawyer, the administrative law judge shall define the issues to be heard." The Administrative Law Judge should not have held a hearing solely on the 2008 injury.

As the majority has declined to remand this claim back to the Administrative Law Judge, the claimant should request a hearing on the 2006 claim. For the aforementioned reasons I must respectfully dissent.

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PHILIP A. HOOD, Commissioner