

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F703765

CURTIS EMERSON,  
EMPLOYEE

CLAIMANT

FEDERAL COACH LLC,  
EMPLOYER

RESPONDENT

ZURICH AMERICAN INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED APRIL 27, 2010

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

Claimant represented by the HONORABLE MICHAEL J. HAMBY,  
Attorney at Law, Greenwood, Arkansas.

Respondents represented by the HONORABLE CURTIS L.  
NEBBEN, Attorney at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Affirmed and  
Adopted.

## OPINION AND ORDER

Claimant appeals an opinion and order of the  
Administrative Law Judge filed September 23, 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. On all relevant dates, including February  
21, 2007, the relationship of employee-  
employer-carrier existed between the parties.
3. On all relevant dates, the claimant earned  
wages sufficient to entitle him to weekly  
compensation benefits of \$503.00 for total

disability and \$377.00 for permanent partial disability.

4. The claimant has failed to prove by the greater weight of the credible evidence that he sustained a compensable injury to his low back or lumbar spine, on February 21, 2007 or any other date during his employment with this respondent. Specifically, the claimant has failed to prove by the greater weight of the credible evidence the probable or likely existence of a causal relationship between any general employment-related activity or any specific employment-related incident, on February 21, 2007 or any other date, and any physical injury to his low back or lumbar spine. Thus, the claimant has failed to prove by the greater weight of the credible evidence the occurrence of a "compensable injury" to this portion of his body, as that term is defined by either Ark. Code Ann. §11-9-102(4)(A)(i) or § 11-9-102(4)(A)(ii)(b).
5. The respondents have denied the occurrence of any injury to the claimant's low back or lumbar spine and have controverted this claim in its entirety.

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 September 23, 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. The majority has affirmed and adopted the Administrative Law Judge's opinion. In this opinion, the Administrative Law Judge states that the claimant is not a credible witness. I disagree. After a de novo review of the record, I find that the claimant credibly

testified as to the occurrence of the injury while welding limousine bumpers. The claimant's herniated disc injury is well-documented. Although there was some discrepancy in the claimant's reporting the work-related nature of his injury to his doctors, I find the discrepancy to be minor, and do not believe it discredits the claimant's otherwise credible testimony regarding the onset of his back injury after welding limousine bumpers.

In short, I find the claimant to be a credible witness who has proved by a preponderance of the evidence that he sustained a compensable injury to his low back while welding limousine bumpers on February 21 and February 22, 2007. Accordingly, I would award all medical treatment and temporary total disability benefits related to the claimant's compensable low back injury.

For the aforementioned reasons I must respectfully dissent.

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PHILIP A. HOOD, Commissioner

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