

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. F900167

DEAN PETRICHES, EMPLOYEE CLAIMANT

J.W. ALUMINUM COMPANY,  
EMPLOYER RESPONDENT

HARTFORD INSURANCE CO OF THE MIDWEST  
INSURANCE CARRIER RESPONDENT

OPINION FILED JULY 27, 2010

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

Claimant represented by the HONORABLE THOMAS W. MICKEL,  
Attorney at Law, Conway, Arkansas.

Respondents represented by the HONORABLE GENE WILLIAMS,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the  
Administrative Law Judge filed January 5, 2010.

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

1. The Arkansas Workers' Compensation  
Commission has jurisdiction over  
this claim.
2. The stipulations set forth above are  
reasonable and are hereby accepted.

3. Claimant has proven by a preponderance of the evidence that he sustained a compensable injury in the form of neck spasms; however, he has failed to prove that he sustained any other form of compensable injury.
4. Claimant has not proven by a preponderance of the evidence that he is entitled to additional medical treatment of his neck.
5. Claimant has not proven by a preponderance of the evidence that he is entitled to temporary total disability benefits.
6. Claimant has not proven by a preponderance of the evidence that he is entitled to a controverted attorney's fee.

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 opinion. The majority has affirmed and adopted the opinion of an Administrative Law Judge. After a de novo review of the record, I find that the Administrative Law Judge's reasoning regarding the claimant's injury and "spasm" and Flexeril doesn't make any sense. Contrary to the Administrative Law Judge's reasoning, the "neck spasms" are the objective findings of injury which are required to support the award of benefits. The claimant did not have a diagnosis of neck spasms; he was diagnosed with a cervical strain/sprain with associated underlying conditions. The claimant was showing spasms as late as December 1, 2008, when he saw Dr. Kriesel. The preponderance of the evidence

demonstrates that the claimant sustained an aggravation of a pre-existing condition. The employer must take the employee as it finds him, and aggravations of pre-existing conditions are compensable. Heritage Baptist Temple v. Robinson, 82 Ark. App. 460, 120 S.W. 3d 150 (2003).

For the aforementioned reasons I must respectfully dissent.

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PHILIP A. HOOD, Commissioner