

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F805935 & F809297

JON SILVEY, EMPLOYEE	CLAIMANT
PAT SALMON & SONS, INC., EMPLOYER	RESPONDENT
ACE AMERICAN INSURANCE COMPANY/ SPECIALTY CLAIMS SERVICES (TPA), INSURANCE CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 13, 2010

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

Claimant represented by the HONORABLE LAURA BETH YORK,
Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE SUSAN M. FOWLER,
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 March 2, 2010.

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. The employer/employee/carrier relationship existed on or about June, 2008, and at all relevant times, when the claimant contends he sustained compensable injuries.

3. Respondents accepted a hernia and a thoracic strain as compensable injuries.
4. The claimant is entitled to the maximum compensation rates for 2008.
5. The claimant has failed to prove by a preponderance of the evidence that he suffered a compensable low back injury which was caused or related to the June, 2008, work accident.
6. The claimant has failed to prove by a preponderance of the evidence that he suffered a compensable neck or carpal tunnel injury at work in that there are no objective medical findings of a neck injury or carpal tunnel syndrome.
7. The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical or temporary total disability benefits.

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 concurs, in part, and dissents, in part.

CONCURRING AND DISSENTING OPINION

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the claimant proved by a preponderance of the evidence that he did sustain a compensable back injury, and must respectfully dissent on this issue. I agree with the majority that the claimant failed to prove a compensable neck or carpal tunnel injury, as there are no objective findings.

In order to prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a

preponderance of the evidence: (1) an injury arising out and in the course of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury; and (4) that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2002). Mickel v. Engineering Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Here, it is uncontroverted that the claimant sustained a compensable injury. The respondents accepted as compensable that the claimant sustained a thoracic sprain and a hernia in June of 2008, for which medical treatment was provided. However, despite the claimant complaining of back pain, no diagnostic tests were ever performed and the claimant was released with regard to his thoracic strain before he ever received any treatment for his thoracic strain. The medical records reflect that the claimant complained of a "popping" in his back, and he experienced pain in his mid-back.

Dr. Rosenzweig clearly identifies the claimant's mid-back pain as referred pain, or pain that radiated up from the actual site of the injury. Basically, Dr. Rosenzweig is saying that just because he felt pain in his mid-back does not mean that the pain was not coming from a low back injury. Likewise, Dr. Rosenzweig opined that the pain from the hernia may have masked exactly where the claimant's pain was coming from.

Additionally, the medical records support the claimant's testimony that he did not have back problems prior to the June 2008 injury. It is clear that the claimant had made prior complaints, but his back pain had always resolved. Likewise, the last time the claimant had complained of back pain, in 2004, the diagnostic tests showed only some degeneration - not herniation, or even bulging in the lumbar spine. As such, the only logical explanation for the claimant's sudden onset of back pain in June of 2008 is the incident in which the claimant sustained other admittedly compensable workers' compensation injuries. Given the fact that the claimant immediately complained of back pain and Dr. Rosenzweig opined that the claimant suffered from "referred pain", there is no other reasonable

explanation of the claimant's injury other than that he sustained the injury on the same date, in the same accident which caused the claimant to suffer a thoracic strain and a hernia.

For the aforementioned reasons I must respectfully concur, in part, and dissent, in part.

PHILIP A. HOOD, Commissioner