

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F907241

JOHN WIGGIN,
EMPLOYEE

CLAIMANT

BRIDGESTONE AMERICAS HOLDINGS,
EMPLOYER

RESPONDENT

OLD REPUBLIC INS. COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED OCTOBER 19, 2010

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

Claimant represented by the HONORABLE JASON HATFIELD,
Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE JOSEPH PURVIS,
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 July 26, 2010. In said
order, the Administrative Law Judge made the following
findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at
the pre-hearing conference conducted on
December 9, 2009, and contained in a pre-
hearing order filed December 10, 2009, are
hereby accepted as fact.
2. The respondents have failed to prove the
shippers' defense.

3. The claimant has proven by a preponderance of the evidence the existence of objective medical findings regarding his lower back difficulties.
4. The claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury on August 4, 2009, while employed by the respondent.

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 July 26, 2010 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 sustained a compensable specific incident back injury on August 4, 2009, and I would award benefits accordingly.

HISTORY

The claimant is a 52-year-old male who began working as a lead auto technician for the respondent in April 2009.

The claimant testified that Dr. Vincent Runnels performed surgery on his back in approximately 1979 or 1980. He was released without any restrictions or impairments after he healed from the surgery, and has worked as an auto mechanic ever since. From the time he

was released from surgery until he was injured on August 4, 2009 - a period of approximately 29 years - the claimant had no problems with his back, and he sought no medical treatment for back or leg pain.

Before beginning work for the respondent, the claimant underwent a physical examination performed by Dr. Craig Cooper at the respondent's request and expense. The claimant's offer of employment was contingent upon passing the pre-employment physical. Initially, the claimant marked on a questionnaire that he had no previous surgery. During the physical, he advised Dr. Cooper of his previous back surgery. Dr. Cooper's report, dated April 1, 2009, notes "low back surgery 1980" under a section entitled "Describe Abnormal Findings." During the physical, a full examination of the claimant's neurological condition, as well as his back, spine, and lower extremities was conducted. All were found to be "normal." The claimant was referred to the respondent's program medical director for further evaluation. The claimant spoke with the program medical director regarding his history of lower back surgery, as well as his problem with hearing loss in his right ear. The claimant was cleared

by the program medical director and was subsequently hired by the respondent.

The claimant worked as an automotive mechanic from April to August of 2009. His job duties included a great deal of heavy lifting. He worked long hours with overtime and did not miss work prior to his work-related injury on August 4, 2009. On that day, claimant injured his low back while lifting an oversized tire that was to be repaired. As the claimant picked up the wheel and tire from the platform and set it on the ground, he felt a burning sensation in his right lower back, warmth in his right leg, and numbness in his neck. He immediately reported the injury to Randy Buckley. The claimant was sent to Cooper Family Clinic, the same clinic where his pre-employment physical had been performed, and was examined by Dr. Haws. He informed Dr. Haws of his previous back surgery, as he had informed Dr. Cooper during the pre-employment physical. At that time, Dr. Haws indicated that the claimant's complaints were from an acute strain which had occurred that day. The claimant was prescribed an anti-inflammatory and muscle relaxer and given a restriction of lifting no more than 10 to 15 pounds.

The claimant returned to work on August 6, 2009, with a doctor's slip outlining his lifting restrictions, and he was told to sweep the floors. That day, the claimant was written up and given a three-day suspension for "failure to follow Firestone tire repair procedure" for using a regular patch instead of a plug. He had previously been written up for "failure to follow dress code." During his tenure, claimant was never written up for failing to perform the heavy job requirements of a mechanic or for missing work.

At the claimant's August 12, 2009 follow-up appointment with Dr. Haws, Dr. Haws recommended an MRI due to the claimant's deteriorating condition, including reduced range of motion and increased complaints of pain. The MRI revealed a herniated disc between the fourth and fifth lumbar vertebra that extruded out to the right, putting pressure on the fifth lumbar nerve root. Dr. Haws referred the claimant for neurosurgical evaluation, took the claimant off of work, and never released the claimant back to work in any form.

Subsequently, the claimant was referred to and seen by Dr. Gannon Randolph. Dr. Randolph ordered

physical therapy and an electromyogram (EMG) test, which respondents denied.

DISCUSSION

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. §11-9-102(4) (A) (i) (Repl. 2002), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical 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 (4) (D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997). The phrase "arising out of the employment" refers to the origin or cause of the accident, so the employee is required to show that a causal connection exists between

the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985).

Here, a specific employment-related incident or accident occurred on August 4, 2009, when the claimant injured his low back while lifting an oversized tire that was to be repaired. As the claimant picked up the wheel and tire from the platform and set the tire on the ground, he felt a burning sensation in his right lower back, warmth in his right leg, and numbness in his neck. The claimant immediately sought medical treatment. There are no medical records in evidence to lead to the conclusion that the claimant has received any treatment for a back injury since his surgery almost thirty years ago. Dr. Haws testified that the claimant's description of his symptoms is supported by the objective medical findings of the MRI report.

The claimant was able to perform all of his job duties in a physically demanding profession before the August 4, 2009 incident. The Administrative Law Judge concluded in his opinion that "I believe the claimant did have pain before the August 4, 2009, incident." There is no medical record in evidence to validate this opinion. In fact, the Administrative Law Judge bases his opinion wholly on the testimony of

respondent's employees who claim that the claimant had ongoing back problems. This is in direct conflict with the claimant's witnesses, Frank Ralph and William Pruitt, the testimony of the claimant himself, the claimant's work for respondent prior to his injury, and the medical evidence in the case. In my opinion, the majority has erred by affirming and adopting the opinion of the Administrative Law Judge. I find that the preponderance of the evidence clearly shows that the claimant sustained a compensable back injury on August 4, 2009.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner