

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F812577

ROBERT E. WILKEY, EMPLOYEE	CLAIMANT
DANCOR TRANSIT, INC., EMPLOYER	RESPONDENT
RETENTION MANAGEMENT SERVICE, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED OCTOBER 15, 2010

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

Claimant represented by the HONORABLE PHILLIP WELLS, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE JARROD PARRISH, 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 April 27, 2010. 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 over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has failed to prove, by a preponderance of the credible evidence, that he sustained an injury to his right lower

extremity as the result of the December 17, 2008, work-related motor vehicle accident.

4. The claimant has failed to prove, by a preponderance of the evidence, that his cellulitis, need for treatment, and disability are causally related to an injury sustained while working for Dancor Transit, Inc.

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 April 27, 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's cellulitis is indeed a compensable injury. The claimant's treating physician, Dr. James W. Fletcher, III, wrote:

Mr. Robert Wilkey (DOB 1/09/1954) is my patient at the NEA Baptist Wound Care Center. I am treating him for the injury to his right lower leg which is the result of a complication related to his motor vehicle accident last month.

(Emphasis added.) I examined Mr. Wilkey during his acute hospitalization and have continued with his outpatient follow up. I have discussed his case with the other consulting physicians who cared for him in the hospital and they all agree that the cellulitis and resultant ulceration of the leg are related to this initial injury.

(Emphasis added.) He had pain and swelling in the right calf soon

after the accident, with the edema and stasis he was set up for infection and the resultant ulceration. (Emphasis added.)

Based on Dr. Fletcher's opinion, I find that the claimant has provided sufficient evidence to establish that the motor vehicle accident caused the cellulitis. Contrary to the majority, I do not credit the differing opinion of Dr. William Lagaly, who did not treat the claimant.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner