

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F906291

JOHNNIE WILLIAMS,
EMPLOYEE

CLAIMANT

HOT SPRINGS EXCAVATING,
EMPLOYER

RESPONDENT

EMC INSURANCE COMPANIES,
INSURANCE CARRIER

RESPONDENT

ORDER FILED DECEMBER 2, 2010

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

Claimant represented by the HONORABLE SHANNON MUSE
CARROLL, Attorney at Law, Hot Springs, Arkansas.

Respondent represented by the HONORABLE MELISSA WOOD,
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 28, 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 a compensable back injury arising out of and during the course of his employment with Hot Springs Excavating Company which was the result of a specific incident on July 7, 2009.

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 28, 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 the claimant sustained a compensable specific incident back injury on July 7, 2009, while operating heavy equipment for the respondent employer. 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).

Here, the claimant testified that his back was injured when he backed up over a stump, jarring the heavy equipment he was driving. The problem for the claimant is that he was working alone when the specific incident happened. However, as did the Administrative Law Judge, I find the claimant to be a credible witness. I believe his testimony about driving over a stump and jarring the equipment. Furthermore, Mr. Lloyd Wynn, Jr., Vice-President of Hot Springs Excavating, testified that he himself had driven the heavy equipment for a number of years, and that the mechanism of injury to which Johnnie Williams testified certainly could have injured him.

Additionally, the types of injuries the claimant sustained, a herniated disc and an annular tear, are not the types of injuries a heavy equipment operator could work through. As such, any conclusion

that the claimant's injuries pre-existed the specific incident is not supported by the evidence.

As for the delay in reporting the incident and injury, the claimant testified that he has been a heavy equipment operator for more than 35 years and that it is not abnormal to experience some back pain and difficulty. He knew on that date and at that time that he had hurt himself, but he was hopeful it would go away. This attempt by the claimant to minimize his injury is not uncommon in workers' compensation claims, particularly among diligent employees. The claimant's testimony, and the fact that he was a diligent employee, clearly explains any delay in reporting the incident and injury, as well as the failure of the initial medical reports to mention the specific incident.

I find that the claimant's credible testimony, supported by the testimony of Mr. Wynn, and bolstered by the medical record, clearly create a preponderance of the evidence meeting all of the elements required for a specific incident injury. In fact, the only testimony against the claimant was from Mr. Chester Shaw, who testified, among other things, that there were no stumps of the size the claimant struck on his property. I find, as did the Administrative Law Judge, that Mr. Shaw

is not a credible witness. His testimony is contradicted not only by the pictures of his property introduced by the claimant, but also the pictures introduced by the respondent. Additionally, Mr. Shaw appeared in his testimony to confuse dates, times and places. As Mr. Shaw's testimony is not credible, the only evidence on which the majority could have denied this claim is minor inconsistencies in the medical record. For the majority to deny this claim based sheerly on minor inconsistencies in the medical record, it must have disregarded the testimony of the claimant, which was specifically found to be credible, as well as the testimony of Mr. Wynn. While the Commission has the authority to resolve conflicting evidence, including medical testimony, Foxx v. American Transp., 54 Ark. App. 115, 924 S.W.2d 814 (1996), the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. Coleman v. Pro-transportation, 97 Ark. App. 338, 249 S.W. 3d 149, (2007). I find that the credible testimony of the claimant and Mr. Wynn clearly outweighs any minor inconsistencies in the medical record, the balance of which clearly supports the claimant's account.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner