

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G008058

BOBBY BEVILLE, EMPLOYEE	CLAIMANT
MAIL CONTRACTORS OF AMERICA, INC., EMPLOYER	RESPONDENT
NEW HAMPSHIRE INSURANCE COMPANY, CARRIER/TPA	RESPONDENT

OPINION FILED SEPTEMBER 6, 2011

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

Claimant represented by the HONORABLE MARC I. BARETZ, Attorney at Law, West Memphis, Arkansas.

Respondents represented by the HONORABLE DAVID C. JONES, 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 April 28, 2011.

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

1. There was an employer/employee relationship on September 27, 2008.
2. The compensation rates are \$502/376.
3. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury arising out of and in the course of his employment.

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 dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the claimant has met his burden of proof for a compensable specific incident aggravation injury, and I would award benefits accordingly.

FACTS

On September 27, 2008, the claimant was operating a fully-loaded mail truck and trailer on a trip to Hazelhurst, Mississippi. The claimant was driving along Interstate 55 South, when a SUV began approaching the interstate from the entrance ramp connected to an overpass. The SUV failed to yield to the claimant's vehicle as it entered the interstate and struck the passenger side of the claimant's truck, not the trailer. The claimant was forced into the left lane; but, in order to avoid impact with the vehicle in that lane, the claimant swerved back towards the right, which caused the mail cargo to shift in the trailer, resulting in the truck and trailer shooting up a 15-foot embankment, hitting a telephone pole, and landing on its side. Photographs of the accident were introduced at the hearing. Once the claimant was removed from the truck with assistance from emergency personnel, he immediately reported the accident by telephoning his supervisor, Linda Thrasher.

Prior to this accident, the claimant suffered a back injury in 2005. The claimant was treated for this injury by Dr. Jerry Engleberg, a physician with Semmes Murphy Neurologic and Spine Institute. In 2005, the claimant suffered a protruding disc at his L4 disc. The claimant underwent surgery to repair the protruding disc at L4. Dr. Engleberg's post-operative notes of February 3, 2006 indicate that the claimant was responding

well to his surgery and was regaining much of his lost strength. Dr. Engleberg further indicated that the claimant would continue to suffer some pain and abnormal function of the L4 joint post-surgery. The claimant continued to seek treatment over the next two years for this pain. The claimant was seen at Campbell Clinic Orthopedics in June of 2008 for this pain, at which time he was ordered to obtain an MRI. The MRI obtained on September 10, 2008, showed a protruding disc at L4 compressing the L5 nerve root. It also revealed a small left protrusion of disc L5-S1. The claimant's motor vehicle accident occurred approximately 17 days following this MRI.

Following the September 27, 2008 accident, the claimant reported worsening pain on his left side. The claimant was referred in 2009 to Dr. Jeffrey Dlabach by Baptist Hospital. On September 6, 2009, Dr. Dlabach ordered an MRI, which revealed a large protruding disc at L5-S1. The claimant continued treatment with Dr. Dlabach and received an epidural spinal block at his L5-S1. When the spinal block did not provide any relief to the claimant, Dr. Dlabach referred the claimant to Dr. Patrick Curlee of Southern Spine Specialists. Dr. Dlabach also noted that he would provide the claimant's medical records thus far to Dr. Curlee for his review. Dr. Curlee recommended surgery to correct the large protruding disc at the claimant's L5-S1. This surgery was performed on December 7, 2009. The claimant was taken off

work from November 28, 2009 through six weeks post-surgery. The claimant was released in January 2010 to full duty.

The claimant returned to Dr. Curlee in July 2010, experiencing pain on his right side. The claimant continues treatment for these symptoms. Dr. Curlee, who was in possession of all of the claimant's medical records, opined that the claimant's large disc herniation at L5-S1 was a result of the motor vehicle accident that occurred on September 27, 2008.

LEGAL ANALYSIS

In workers' compensation law, an employer takes the employee as he finds him, and employment circumstances that aggravate pre-existing conditions are compensable. Heritage Baptist Temple v. Robison, 82 Ark. App. 460, 120 S.W. 3d 150 (2003). An aggravation of a pre-existing non-compensable condition by a compensable injury is itself compensable. Oliver v. Guardsmark, 68 Ark. App. 24, 3 S.W.3d 336 (1999). An aggravation is a new injury resulting from an independent incident. Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W. 3d 900 (2000). An aggravation, being a new injury with an independent cause, must meet the definition of a compensable injury in order to establish compensability for the aggravation. Farmland Ins. Co. v. Dubois, 54 Ark. App. 141, 923 S.W. 2d 883 (1996).

Ark. Code Ann. §11-9-102(4) (A) (Repl. 2002) defines

"compensable injury":

(i) An accidental injury causing internal or external physical harm to the body...arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(a)(i).

Here, Dr. Curlee, with the benefit of all of the medical records, has opined that the claimant's large protruding disc at L5-S1 is due to the claimant's truck accident. I agree with Dr. Curlee.

CONCLUSION

I find that the claimant has met his burden of proof for a compensable specific incident aggravation injury, and I would award benefits accordingly. For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner