

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F906351

MONZELL COPPIN, EMPLOYEE	CLAIMANT
TANKINETICS, EMPLOYER	RESPONDENT
CHARTIS CLAIM, INC., CARRIER/TPA	RESPONDENT

OPINION FILED MARCH 22, 2011

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

Claimant represented by the HONORABLE EVELYN BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents 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 from a decision of the Administrative Law Judge filed August 3, 2010.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed at all relevant times, including July 5, 2009.
3. The claimant earned sufficient wages to entitle him to the maximum compensation rates.

4. This claim for additional benefits has been controverted in its entirety.
5. The claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable injury to his back during and in the course of his employment with respondent-employer on July 5, 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.

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

After my de novo review of the entire record, I must respectfully dissent from the majority opinion. I would award medical benefits and both temporary total disability and "505(a)" benefits to the claimant. I find the claimant to be a credible witness whose testimony was supported by the medical records.

At the hearing, the claimant and his brother testified. Medical records and the depositions of two supervisory personnel were also introduced. The claimant testified that he hurt his back trying to slide a steel bar, that he told his brother and supervisors, that he was seen by the site nurse the day of the injury and in the emergency room the next day, and that he did not work again after the visit to the nurse. Supervisory personnel testified that the claimant had hurt his back days prior to the nurse visit, that he had planned to quit or be laid off, and that he worked after the emergency room visit.

The claimant's testimony was consistent with the emergency room medical records. While the respondents' evidence suggests that the claimant was injured before June 5, each respondent participant was biased. The nurse did not testify, but her notes give an injury date of July 2, 2009. The claimant signed the note, but he signed the note in the portion of the form regarding his basic information. There is nothing about the

form to suggest that his signature in one section is an affirmation of the content of a separate section. The fact that David Phelps and Brandon Ardrey, supervisory personnel, stated that the claimant hurt himself a few days before July 5 is not probative. Both continue to be employed in professions in which lay offs and moves from one employer to another are common. It is in their best interest to maintain a good relationship with the respondent-employer. Phelps testified that the claimant told him he wanted to go home, because the weather was too hot and the work was too physical. However, the claimant was from Oklahoma, where the weather gets just as hot and humid as in Pensacola, and the claimant's work history included construction framing, heat and air work, and iron work. There is no doubt that the claimant had a history of physical work in hot conditions.

It is difficult to imagine that the claimant changed his story overnight or that he believed that he could get away with telling two different stories within twenty-four hours. The claimant's description to the emergency room personnel is consistent with his testimony, as well as his brother's, at the hearing. The emergency room physician observed some spasm on July 6, which is consistent with his description, as well.

The fact that the claimant stated that his brother was a witness to his injury, and then that his brother came over to him after he hurt his back and was kneeling, does not show that

the claimant was untruthful. This apparent inconsistency reflects the claimant's lack of savvy concerning the legal import of the word "witness." He openly explained that his brother knew about the injury, because the claimant told him about it.

The majority, in affirming and adopting the Administrative Law Judge's opinion, also relied upon payroll records to suggest that the claimant remained employed and working after his visit to the emergency room. However, the payroll records show that the claimant worked 79.50 hours in a pay period and was paid \$1389.50 by a check written on July 10, 2009, and that he worked 19 hours and was paid \$266 by a check written on July 17, 2009. It is not unusual for an employer to have a delay between the pay period and the check paid for that period. The claimant was laid off on July 8, and he received a normal check on July 10, but a significantly reduced check for significantly reduced hours one week later. This suggests not that the claimant lied about working, but that the respondent-employer had a delayed payment system, similar to the State of Arkansas itself, and that the respondent-employer's credibility is suspect.

Lastly, the surveillance reports only show that the claimant was active on one occasion, lifting beverages and a bag which he gave to his son to carry. Otherwise, the surveillance reflects little to no activity of any kind, other than driving,

on the part of the claimant. This does not undermine the claimant's credibility.

Given the medical reports that the claimant has objective findings of injury, including the observation of spasms on July 6 and his later CT scan, coupled with the consistency of the claimant's description of his injury to the emergency room doctor the day after his injury, with his hearing testimony, I find that the claimant has demonstrated both his credibility and the compensability of his back injury, for which he is entitled to medical benefits, including the care he received in Pensacola, and from Dr. Wood, and including Dr. Wood's recommendation of an MRI and further follow up.

The claimant was unable to work from July 6 to the date of the hearing, at least. Dr. Wood's letter, stating that it was his opinion that the claimant had been unable to work since his injury, was not an attempt at retroactive work restrictions, but rather a simple statement of fact that the claimant's injury necessitated that he be off work. The claimant remains within his healing period, because further diagnostic work has been ordered and the claimant has not reached maximum medical improvement.

Furthermore, the claimant is entitled to benefits under Ark. Code Ann. Sec. 11-9-505(a) for the period from July 6, 2009 until July 6, 2010. The claimant was able to perform light duty,

including driving a truck or van, or the light duty tool attendant job which the respondents asserted was available. While the Pensacola job ended in November, the respondent-employer remained in business and could have employed the claimant in light duty elsewhere; therefore, I would award benefits for the full year.

I find the claimant's testimony credible and consistent with the record. I would award medical and indemnity benefits, including both temporary total disability benefits and 505(a) benefits, because he has proven the compensability of his injury.

For the foregoing reasons, I must respectfully dissent from the majority opinion.

PHILIP A. HOOD, Commissioner