

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G000264

DAVID L. FLIPPO,  
EMPLOYEE

CLAIMANT

INTEGRITY ENERGY SERVICES, LLC.,  
EMPLOYER

RESPONDENT

SEABRIGHT INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED OCTOBER 14, 2011

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

Claimant represented by the HONORABLE C. MICHAEL WHITE,  
Attorney at Law, North Little Rock, Arkansas.

Respondent represented by the HONORABLE ANDREW IVEY,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed in part,  
reversed in part.

OPINION AND ORDER

The respondents appeal and the claimant cross-appeals  
an administrative law judge's opinion filed June 14, 2011.  
The administrative law judge found that the claimant proved  
he sustained a compensable injury to his back and to his  
head. The administrative law judge found that the claimant  
proved he was entitled to reasonably necessary medical  
treatment, but that the claimant did not prove he was

entitled to temporary total disability benefits. After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's finding that the claimant proved he sustained a compensable injury to his back. We reverse the administrative law judge's finding that the claimant proved he sustained a compensable injury to his head.

I. HISTORY

David Lyn Flippo, age 48, testified that he became employed as a vacuum truck driver for Integrity Energy Services in December 2009. The parties stipulated that the employment relationship existed on or about January 4, 2010, on which date the claimant was driving a truck for the respondents during icy road conditions. The claimant testified on direct examination:

Q. Was there an incident that day where you had sustained some injuries?

A. Yes.

Q. Tell the Judge what happened.

A. I was climbing a hill....In the truck. And the - it lost traction and came to a complete stop and - and then after a period of a couple of minutes, it began to slide backwards. And in my opinion, it was either - it meant my life to get away from the truck, so I jumped from the truck.

Q. And you were in the truck when it started sliding?

A. Yes.

Q. And so if I understand your testimony, you jumped from the cab?

A. Yes....

Q. Did you land in a standing position or -

A. From sort of like a - almost like a - I tried for like a prone position, to roll, and - and I hit and came back and hit my back and I just - and hit the back of my head and then [I] rolled and hit the side of my head and -

Q. Did you experience any loss of consciousness?

A. Yes.

Q. Okay. And how did you know you had a loss of consciousness?

A. Because when I jumped out of the truck, the roar was just like deafening and -

Q. And where was the roar coming from?

A. From the truck sliding down the hill and - and then when I came to, I was expecting to hear that same roar, and it was just total peace. I mean I couldn't - it was - and the truck had already went down to the bottom of the hill.

The claimant testified that he felt immediate back pain as a result of the accident, "and then like a headache and my neck was sore." The claimant testified that he got back

into the truck and notified a dispatcher, via radio, that an accident had occurred.

Charles Allshouse, a dispatcher/pusher for the respondent-employer, testified for the respondents:

Q. Tell me, if you can, tell the Court what you remember happening on January the 4<sup>th</sup> of 2010.

A. I was on my way to work....between 4:30 and 5:00 a.m., I heard a call from Mr. Flippo that he was stuck on the hill, had lost traction and he couldn't get up the hill....Mr. Flippo was speaking to dispatch, that he was stuck on the hill. I heard the call come out, and I was on my way, already on the road, so I informed dispatch that I was on my way and that I would head out there to the scene to help get him pulled up the hill....After I got off the radio, I called, by telephone, to George White and notified him, you know. And as I was hanging up with George, Mr. Flippo came back on the radio and said, "Never mind, it's in the ditch. I'm going to need a tow-truck or something," and he said "I" - "it started sliding back and I had to let her go." And so "What do you mean you let her go?" And he said, "Well, I jumped out." I said, "Man, David, don't ever jump off a moving vehicle, you know." He said, "Well, I didn't know what to do. I couldn't remember what I passed." And I headed on out to the scene....

Q. How long did it take, from when he told you it was in the ditch, for you to arrive on the scene approximately?

A. Approximately ten minutes....

Q. Did he advise you he was injured?

A. No....

Q. Did he advise you he had hurt his back, tailbone, head, any part of his body?

A. Nothing.

Q. Did he ever tell you he hit his head on the ice?

A. No....

Q. Did you offer to send Mr. Flippo to the doctor?

A. No, he said he was fine.

George White, a manager for the respondent-employer, testified for the respondents:

Q. What happened when you reached the scene?

A. At the scene, Charles Allshouse was there. He was talking with David Flippo in Charles' truck....The truck was off on the right shoulder - I mean just a ditch right there....it looked like the truck was actually parallel parked, because there were two signs there it didn't even run over....As soon as I opened the door to climb up in the cab, neither one of the brakes were pushed in on the truck; neither one of the brakes was set in that truck. Both of them was still released....

Q. And when you first saw him at the scene, did he appear dazed or confused, anything like that?

A. No, sir....

Q. Did he report to you he had lost consciousness?

A. No, sir....

The claimant testified that his employment with the respondents was terminated on January 5, 2010. Upon questioning by an administrative law judge, the claimant described his perception of the basis for his termination: "Well, the first time, they said I was fired for endangering my life by jumping from the vehicle. Later on, they said I was fired, because I let the truck roll down the hill. And then the third version was I was fired, because I was within my first 90 days and they can do that in the State of Arkansas."

George White testified for the respondents:

Q. Were you involved in the termination of Mr. Flippo?

A. Yes, I was....we just decided that regardless of whether it was rolling or sliding, it was a very unsafe act to remove yourself from a moving vehicle. And we just told him - when he came in on the 5<sup>th</sup> to come to work, we just called him in there and explained to him that at this time he was no longer - he being a probation period, and it was just a very unsafe act of removing himself from a moving vehicle....

Q. So you advised him that he was terminated for a serious safety violation within his probation period?

A. Yes....

Q. Did Mr. Flippo ever personally ask you to allow him to go to the doctor?

A. No.

Q. Did he ever ask you to fill out any workers' compensation paperwork?

A. No, sir....

Q. So at least as of the time that he was employed by Integrity Energy Services, through January the 5<sup>th</sup>, he never advised you that he was injured or hit his head or lost consciousness?

A. No.

George White agreed on cross-examination that the claimant had been driving a truck owned by the respondents and that the claimant was performing employment services when driving the truck. Mr. White also agreed that, whether the respondents' truck had rolled or slid, an accident had occurred on January 4, 2010 and the truck had gone into a ditch.

The record indicates that the claimant sought medical treatment on his own, at Conway Regional Health System, beginning January 6, 2010. An admission record indicated that there had been an employment-related accident, and that the claimant complained of pain in his back, neck, and side. X-rays were done on January 6, 2010:

HISTORY: Patient fell, has pain in neck, upper and lower back pain.

FINDINGS: The examination of the cervical spine in multiple views shows no evidence of fracture. The disc spaces, vertebral bodies, and posterior elements are intact and symmetrical. Alignment is anatomic. The atlantoaxial joint appears intact and normal.

IMPRESSION: Negative cervical spine series.

LUMBOSACRAL SPINE SERIES, FIVE VIEWS: The study shows the disc spaces, vertebral bodies, and posterior elements to appear intact and normal. Alignment is anatomic. No fracture is seen.

IMPRESSION: Negative lumbosacral spine series in five views.

DORSAL SPINE SERIES, TWO VIEWS: The study shows the disc spaces, vertebral bodies, and posterior elements to appear intact and normal. Alignment is anatomic. No fracture is seen.

IMPRESSION: Negative dorsal spine series, two views.

The record indicates that Dr. Stephen Hudson saw the claimant on or about January 6, 2010:

CHIEF COMPLAINT: Jumped out of the back of a truck two days ago and he has soreness in his neck and back.

HISTORY OF PRESENT ILLNESS: Mr. Flippo is a healthy 46 presents ambulatory to the emergency department. He's working here in the gas fields. Two days ago when it was icy and snowy on the ground, he was on the back of a truck in the field, and it started to slide backwards and he worried that he was going to be crushed underneath an overturned truck, so he jumped out of the back of the truck, and landed awkwardly. Since then he's been having pain in his low back and neck. He has had no loss of consciousness or head

injury. He has been off work for the last two days and he was thinking he would get better, but he was persistently sore and he was wondering if we could get him medicine to help him....

NECK: Supple and a little bit tender to palpation posteriorly. He may have a little bit of paraspinous muscle spasm down into his trapezius, greater on the left than the right....

BILATERAL UPPER/LOWER EXTREMITIES: Atraumatic and functioning normally. He has tenderness to his T-spine, and he has increasing tenderness in his L-spine with paraspinous muscle spasm....While in the emergency department the patient had CT scan of his L-spine. I don't see any evidence of an acute abnormality....

Dr. Hudson's clinical impression was "1. Lumbar strain and contusion, status post fall....Right now we're going to treat him empirically with Percocet and Valium. He's going to follow back up with his regular doctor and return here p.r.n. We'll get him a note to be off work another day or two. He's going to rest up and follow back up with their company doctor or his regular doctor or return here p.r.n...." Dr. Hudson signed a note indicating that the claimant could return to work on January 8, 2010. Dr. Hudson indicated on a Workman's Compensation Physician's Report that he had treated the claimant for "lumbar strain/contusion s/p fall." Dr. Hudson indicated that the Expected Duration of Treatment would be "sore for a few

days." Dr. Hudson indicated that the claimant could return to work with no restrictions.

A CT of the claimant's head was performed on January 11, 2010:

Reason for Study: still has headache - visual problems since falling on ice last [week]....  
Findings: There is no evidence of intracranial hemorrhage. No major territorial infarct is identified. The gray white matter differentiation is well maintained. Ventricles and basal cisterns are normal.

Impression: 1. No acute intracranial process identified....

Dr. David Baker saw the claimant on January 14, 2010. The history given to Dr. Baker indicated that an accident had occurred on January 4, 2010, and that the claimant had fallen backwards and had hit his head on ice. Dr. Baker reported a "faint opacity" in the claimant's right eye. Dr. Baker's impression was "Hx trauma - RE."

The record indicates that Dr. Sarkis M. Nazarian saw the claimant on February 3, 2010:

Mr. F. is a 46 y/o man c vision loss following head trauma 1/4/10, referred by Dr. D. Thayer for N-Op eval. She saw him 1/21/10, noted a paracentral defect OD, mostly in the L upper quadrant, not in OS. HVF 30-2 could not be obtained due to machine dysfn. The injury occurred when the truck he was driving lost traction on an icy upslope and started to slide back on a steep grade - he jumped out (estimates

the truck was going >20 mph), hit the back of his head and rolled to his R side, striking his R temple....

Dr. Nazarian's impression was "Left superior quadrantic paracentral VF defects, possibly related to contrecoup injury to the R temporal lobe." Dr. Nazarian planned additional diagnostic testing and stated, "3) Discussed with pt that his vision problems might well be related to brain injury he suffered at the time of his head injury (TBI)."

An MRI of the claimant's brain was performed on March 17, 2010:

Clinical History: 46 y/o with L upper quadrant VF defects OU after jumping off a rolling truck....  
Impression: There is presence of a 6 mm area of gradient hypointensity seen involving the left temporal lobe which is not appreciated on the T1 and T2-weighted sequences. This may suggest hemorrhagic contusion given history of prior trauma. Rest of the brain parenchyma shows no focal lesion or abnormal enhancement. Correlation with clinical findings may be helpful. Bilateral orbits show no significant abnormality. Bilateral cavernous sinuses and optic chiasm shows no significant abnormality.

An x-ray of the claimant's lumbosacral spine was taken on March 27, 2010: "Disc spaces are normally maintained. No fractures are seen. There is no evidence of spondylolysis. Impression: Normal lumbosacral spine." A report from Dr. Michael T. Pilcher on April 9, 2010 included the following

note: "CT head 1/11/2010 in ER: No acute intracranial process identified."

It was noted at a Veterans Administration clinic on April 14, 2010, "46 yo WM here for neuro-op f/u. Pt notes visual defect since having MVA with head injury (hit the back of his head and right temple) and + LOC in January 2010." Dr. Tayyeba K. Ali's assessment on April 14, 2010 was "1. Traumatic optic neuropathy OD Jan 2010 w/ sup-nasal defect OD - likely due to MVA trauma in - Gen yearly f/u." It was also noted on April 14, 2010, "Injuries of this sort are known to cause such visual (sic) loss and defects as seen in Mr. Flippo. His head trauma, as a result of his fall related to his semi-truck accident in January 2010 is the most likely cause of his vision problems/loss."

A pre-hearing order was filed on December 6, 2010. The claimant contended that he was employed as a truck driver for the respondents. The claimant contended, "2. On January 4, 2010, he was driving up an ice-covered, steep hill, when the truck lost traction and started sliding down the hill. The claimant was forced to jump from the truck, and he sustained injuries to his back and a traumatic head injury as a result of this incident." The claimant

contended that he was entitled to reasonably necessary medical treatment, to temporary disability benefits from the date of the injury through a date yet to be determined, and to permanent disability benefits.

The respondents contended that the claimant was "not entitled to the requested benefits because the claimant cannot establish that he sustained accidental injuries identifiable by time and place of occurrence causing internal or external harm to his back, neck, and head which arose out of and in the course of his employment with the respondent-employer, on or about January 4, 2010."

The parties agreed to litigate the following issues:

1. Whether the claimant sustained compensable injuries to his head and back.
2. Whether the claimant is entitled to reasonably necessary medical treatment.
3. Whether the claimant is entitled to temporary disability benefits from the date of the injury until a date yet to be determined.
4. Whether the claimant is entitled to an impairment rating and benefits pursuant thereto.
5. Whether the claimant is entitled to wage-loss disability benefits.
6. Whether the claimant is entitled to a controverted attorney's fee.

An MRI of the claimant's lumbar spine was performed on December 8, 2010, with the following impression:

1. Shallow central disk protrusion at L5-S1 and mild disk bulges at L3-4 and L4-5 with no evidence

of significant thecal sac compression or interval change compared to the December 2004 exam.

2. Lower lumbar facet arthropathy and ligamentous hypertrophic changes with mild associated neural foraminal narrowing at the L4-5 level bilaterally and on the left at L5-S1.

A hearing was held on March 16, 2011. At that time, the claimant reserved any issues with regard to permanent anatomical impairment or wage-loss disability.

An administrative law judge filed an opinion on June 14, 2011. The administrative law judge found that the claimant proved he sustained a compensable injury to his back, and that the claimant proved he sustained a compensable injury to his head. The administrative law judge awarded reasonably necessary medical treatment but found that the claimant was not entitled to temporary total disability benefits.

The respondents appeal to the Full Commission and the claimant cross-appeals.

## II. ADJUDICATION

### A. Compensability

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4) (Repl. 2002), provides:

(A) "Compensable injury" means:

(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) (Repl. 2002). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16) (A) (i) (Repl. 2002). Objective medical evidence is necessary to establish the existence and extent of an injury but not essential to establish the causal relationship between the injury and a work-related accident. *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999).

The claimant has the burden of proving by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. §11-9-102(4) (E) (i) (Repl. 2002). Preponderance of the evidence means the evidence having greater weight or convincing force. *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

1. Back

An administrative law judge found in the present matter, "3. Claimant has proven by a preponderance of the

evidence that he sustained a compensable injury to his back." The Full Commission affirms this finding. The parties stipulated that an employment relationship existed on January 4, 2010, on which date the claimant was driving a truck for the respondents. The claimant testified that he was driving a truck on an icy road, and that the truck lost traction and began sliding down a hill. The claimant testified that he jumped from the cab of the truck, and that he hit his lower back and the back of his head. The claimant testified that he lost consciousness. Charles Allshouse and George White both arrived at the scene of the accident shortly thereafter. Neither Mr. Allshouse nor Mr. White were convinced that the truck had really slid down a hill into a ditch. The record indicates that both men believed that the claimant had gotten out of the truck without setting the truck's brakes, and that as a result the truck rolled downhill into a ditch. Additionally, both Mr. Allshouse and Mr. White testified that the claimant did not inform them he had sustained any physical injuries as a result of the accident.

Nevertheless, George White agreed on cross-examination that the claimant was performing employment services while

driving the respondents' truck on January 4, 2010. The claimant sought medical treatment beginning January 6, 2010. The claimant complained of pain in his back, neck, and side. X-rays taken on January 6, 2010 were negative for an injury to the claimant's cervical spine and lumbar spine. (The claimant does not contend that he sustained a compensable injury to his neck or cervical spine). Dr. Hudson reported on January 6, 2010 that the claimant complained of soreness in his neck and back after jumping out of a truck. Dr. Hudson noted increasing tenderness in the claimant's lumbar spine "with paraspinous muscle spasm." Dr. Hudson's impression was "1. Lumbar strain and contusion, status post fall."

The Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained a compensable injury on January 4, 2010. The claimant proved by a preponderance of the evidence that he sustained an accidental injury to his low back as the result of jumping from the respondents' truck while performing employment services on January 4, 2010. The accidental injury caused physical harm to the claimant's low back in the form of a lumbar strain and contusion as diagnosed by Dr. Hudson. The

accidental injury arose out of and in the course of the claimant's employment with the respondents and required medical services. The injury was caused by a specific incident and was identifiable by time and place of occurrence on January 4, 2010. The claimant established a compensable injury to his low back by medical evidence supported by objective findings, namely, Dr. Hudson's physical observation of muscle spasm on January 6, 2010. Muscle spasms can be objective medical findings establishing a compensable injury. *University of Ark. Med. Sciences v. Hart*, 60 Ark. App. 13, 958 S.W.2d 546 (1997). The Full Commission finds that Dr. Hudson's report of muscle spasm was related to the accidental injury occurring on January 4, 2010 and was not related to a pre-existing condition.

## 2. Head

An administrative law judge found in the present matter, "4. Claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his head." The Full Commission does not affirm this finding. It is the Full Commission's duty to conduct its own fact-finding independent of that done by an administrative law judge. *Crawford v. Pace Indus.*, 55 Ark. App. 60, 929 S.W.2d

727 (1996), citing *Willmon v. Allen Canning Co.*, 38 Ark. App. 105, 828 S.W.2d 868 (1992). An administrative law judge's findings regarding credibility are not binding on the Full Commission. *Roberts v. Leo Levi Hospital*, 8 Ark. App. 184, 649 S.W.2d 402 (1983). The Commission is not required to believe the testimony of the claimant or any other witness. *Patterson v. Frito Lay, Inc.*, 66 Ark. App. 159, 992 S.W.2d 130 (1999). The Commission may accept only those portions of testimony that it determines are worthy of belief. *Tucker v. Roberts-McNutt*, 342 Ark. 511, 29 S.W.3d 706 (2000).

In the present matter, the claimant testified that he hit the back of his head and the side of his head when the claimant jumped from the company truck on January 4, 2010. The claimant testified that he also lost consciousness as a result of the jump and fall. The evidence before the Commission does not corroborate the claimant's testimony that he sustained an injury to his head or brain, and the evidence does not corroborate the claimant's testimony that he lost consciousness on January 4, 2010. Charles Allshouse and George White both testified that the claimant did not inform them of such an injury or a loss of consciousness.

Dr. Hudson, the first physician of record to treat the claimant, noted on January 6, 2010, "he has soreness in his neck and back." Dr. Hudson also plainly noted, "He has had no loss of consciousness or head injury." Dr. Hudson diagnosed lumbar strain/contusion and treated the claimant conservatively.

A CT of the claimant's head was done on January 11, 2010, at which time it was noted, "visual problems since falling on ice last week." The CT impression on January 11, 2010 was "1. No acute intracranial process identified." Dr. Baker reported on January 14, 2010 that the claimant had fallen backwards and "hit his head on ice." It is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). Based on the evidence of record in the present matter, the Full Commission must assign minimal weight to Dr. Baker's notation that the claimant "hit his head on ice" on January 4, 2010. Likewise, the Full Commission assigns minimal weight to Dr. Nazarian's report on February 3, 2010 that the claimant had sustained "head trauma 1/4/10," or Dr. Nazarian's note that the claimant "hit the back of his head

and rolled to his R side, striking his temple." There is no probative evidence before the Commission demonstrating that the claimant struck the back or his head or his temple during the accident on January 4, 2010.

Nor is there any probative evidence before the Commission demonstrating that the claimant sustained a traumatic brain injury on January 4, 2010. The record does not demonstrate that the "gradient hypointensity involving the left temporal lobe" shown in the MRI of the claimant's brain on March 17, 2010 was in any measure related to the January 4, 2010 accidental injury. Finally, the Full Commission assigns minimal weight to the report at the Veterans Administration clinic on April 14, 2010 suggesting that the claimant "hit the back of his head and right temple" on January 4, 2010.

The Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury to his head. The claimant did not prove that he sustained an accidental injury causing internal or external physical harm to his head. The claimant did not prove that he sustained an injury to his head which arose out of and in the course of employment, required medical

services, or resulted in disability. The claimant did not prove that he sustained an injury to his head which was caused by a specific incident or was identifiable by time and place of occurrence. The claimant did not establish a compensable injury to his head by medical evidence supported by objective findings not within the claimant's voluntary control. The Full Commission therefore reverses the administrative law judge's finding that the claimant proved he sustained a compensable injury to his head.

B. Medical Treatment

The employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a) (Repl. 2002). The claimant has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Fayetteville Sch. Dist. v. Kunzelman*, 93 Ark. App. 160, 217 S.W.3d 149 (2005). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Hamilton v. Gregory Trucking*, 90 Ark. App. 248, 205 S.W.3d 181 (2005).

In the present matter, the Full Commission has found that the claimant proved by a preponderance of the evidence that he sustained a compensable injury to his back. The Full Commission therefore finds that the claimant proved he was entitled to treatment provided at Conway Regional Health System on January 6, 2010. The claimant also proved he was entitled to treatment provided by Dr. Hudson on January 6, 2010. As we have noted, Dr. Hudson's clinical impression on January 6, 2010 was lumbar strain and contusion. Dr. Hudson prescribed medication and indicated that the claimant could return as needed. There is no evidence of record demonstrating that the claimant returned to Dr. Hudson or attempted to return to Dr. Hudson for treatment after January 6, 2010.

The claimant did not prove by a preponderance of the evidence that he was entitled to any of the medical treatment of record beginning January 11, 2010. The Full Commission has found that the claimant did not prove he sustained a compensable injury to his head. The medical treatment of record beginning January 11, 2010 was related to an alleged head injury, but as we have determined, there was no probative evidence of record demonstrating that the

claimant sustained a compensable injury to his head. The claimant did not prove that he was entitled to any medical treatment related to a purported head injury, a visual field disturbance, or a purported traumatic brain injury. Nor did the claimant prove that the MRI taken December 8, 2010 was in any way related to the January 4, 2010 lumbar strain. There is no probative evidence of record demonstrating that the protrusion and bulging at L5-S1 and L3-4 were the causal result of the January 4, 2010 lumbar strain.

The claimant proved by a preponderance of the evidence that the medical treatment he received on January 6, 2010 was reasonably necessary in connection with the compensable injury. The respondents are liable for said treatment. The claimant did not prove that any of the other medical treatment of record was reasonably necessary.

C. Temporary Disability

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). "Healing period" means "that period for healing of an injury resulting from an accident." Ark. Code Ann. §11-9-

102(12) (Repl. 2002). The healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. *Arkansas Highway & Transp. Dep't v. McWilliams*, 41 Ark. App. 1, 846 S.W.2d 670 (1993).

An administrative law judge found in the present matter, "6. Claimant has not proven by a preponderance of the evidence that he is entitled to temporary total disability benefits." The Full Commission affirms this finding. The Full Commission has found that the claimant proved he sustained a compensable injury to his low back on January 4, 2010. Dr. Hudson's diagnosis on January 6, 2010 was lumbar strain and contusion, status-post fall. Dr. Hudson took the claimant off work for "another day or two" and indicated that the claimant could return to work on January 8, 2010. Dr. Hudson stated that the claimant would be "sore for a few days" and also stated that the claimant could return to work with no restrictions.

The Full Commission finds that the claimant remained within a healing period and was totally incapacitated from earning wages beginning January 4, 2010 until January 8, 2010. The claimant did not prove that the healing period for his lumbar strain continued after January 8, 2010. Even

if the claimant's healing period did continue beyond January 8, 2010, which the Full Commission does not find, the claimant was not totally incapacitated to earn wages after January 8, 2010. Ark. Code Ann. §11-9-501(a) (Repl. 2002) provides, "(1) Compensation to the injured employee shall not be allowed for the first seven (7) days' disability resulting from injury, excluding the day of injury. (2) If a disability extends beyond that period, compensation shall commence with the ninth day of disability." Because the instant claimant's temporary total disability period extends only from January 4, 2010 until January 8, 2010, he is not entitled to temporary total disability benefits.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained a compensable injury to his back. The claimant did not prove that he sustained a compensable injury to his head. The claimant proved that the medical treatment he received on January 6, 2010 was reasonably necessary in connection with the compensable injury. The claimant did not prove that he was entitled to temporary total disability benefits. The Full Commission therefore affirms in part and reverses in

part the administrative law judge's opinion. For prevailing in part on appeal, the claimant's attorney is entitled to a fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

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A. WATSON BELL, Chairman

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KAREN H. McKINNEY, Commissioner

Commissioner Hood concurs, in part, and dissents, in part.

**CONCURRING AND DISSENTING OPINION**

I must respectfully concur, in part, and dissent, in part, from the majority opinion. I agree with the majority and specifically concur in the finding that the claimant sustained a compensable back injury. However, after a de novo review of the record, as I also find that the claimant has sustained a compensable head injury, and would award benefits related to the head injury, I must dissent from the majority on this issue.

The majority's reasoning for denying the claimant's head injury comes in two parts. First, the

majority concludes that the claimant did not lose consciousness when he hit his head after jumping out of his truck on January 4, 2010. I find that the claimant did lose consciousness. At the hearing, the claimant credibly testified that he lost consciousness. He testified that before he went out, the sliding truck was making a roaring noise. When he awoke, there was no more noise, only quiet. There is no dispute that the truck-jumping incident occurred. In fact, the majority finds that the claimant sustained a compensable back injury in the same incident where he testified that he hit his head. The majority appears to believe the claimant's testimony that he jumped from a moving truck and rolled, injuring his back, but disbelieves his testimony that he hit his head. I find the majority's reasoning inconsistent and erroneous.

Second, the majority reasons that, because the claimant did not lose consciousness, he could not have sustained a compensable head injury. Notwithstanding the fact that this reasoning is not sound from a medical perspective, it is unsound from a legal perspective. There is no requirement in Arkansas workers' compensation law that a claimant needs to prove loss of consciousness in order to

have a compensable head injury. 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). There are no special rules for brain injuries. By requiring the claimant to prove loss of consciousness, the majority has imposed a requirement not required by statute.

On January 11, 2010, only seven days after the claimant jumped from the truck, he presented to the VA with

a headache and vision problems that he said he had been having since the incident. With the exception of his Conway Regional Hospital record, his records consistently reflect that he has related hitting his head in the fall. The claimant denied telling emergency room personnel at Conway Regional that he did not suffer a head injury or loss of consciousness. In treating his vision problems, which he has asserted have included problems with color perception and peripheral vision, his head has been tested. A March 17, 2010 MRI showed a 6 mm gradient hypointense lesion involving the left temporal lobe. This is clearly an objective finding.

Claimant's objective findings were discovered in a reasonable period following the truck incident. A causal relationship may be established between an employment-related incident and a subsequent physical injury based on the evidence that the injury manifested itself within a reasonable period of time following the incident, so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. Hall v. Pittman Construction Co., 234 Ark. 104, 357 S.W.2d 263 (1962).

With respect to the brain lesion, Dr. Manoj Kumar, who read the head MRI, stated that it "may suggest old hemorr[h]agic contusion given history of prior trauma." I credit this. The Commission is authorized to accept or reject a medical opinion and is authorized to determine its medical soundness and probative value. Poulan Weed Eater v. Marshall, 79 Ark. App. 129, 84 S.W.3d 878 (2002). Going further, Dr. Ali on April 14, 2010 again wrote:

Injuries of this sort are known to cause such visual (sic) loss and defects as seen in Mr. Flippo. His head trauma, as a result of his fall related to his semi-truck accident in January 2010 is the most likely cause of his vision problems/loss.

I find that the claimant has proved by a preponderance of the evidence all of the elements required for a compensable specific incident injury. There is no requirement in Arkansas law that the claimant prove loss of consciousness in order to have a compensable head injury. The majority has erred by imposing this requirement. I would award the claimant all workers compensation benefits applicable to his compensable head injury.

For the aforementioned reasons, I must concur, in part, and dissent, in part, from the majority opinion.

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PHILIP A. HOOD, Commissioner