

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. F901435/F902227

WILLIAM FLYNN, EMPLOYEE	CLAIMANT
J B HUNT TRANSPORTATION, EMPLOYER	RESPONDENT
NEW HAMPSHIRE INSURANCE, CARRIER/TPA	RESPONDENT

OPINION FILED JANUARY 28, 2011

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

Claimant appeared pro se.

Respondents represented by the HONORABLE JOSEPH PURVIS, 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 June 25, 2010.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this case.
2. On all relevant dates, the relationship of employee employer- carrier existed between the parties.
3. On all relevant dates, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$484.00 for total disability and

\$363.00 for permanent partial disability, should such benefits have been applicable.

4. The claimant has failed to prove by the greater weight of the credible evidence that he sustained a compensable injury to his back, either as the result of cumulative trauma over time and/or a specific employment-related incident on or about February 5, 2009. Specifically, the claimant has failed to prove by the greater weight of the credible evidence the likely or probable existence of a causal relationship between any physical injury or damage to his low back and any employment-related cumulative trauma over time or any employment-related specific incident on or about February 5, 2009.
5. The respondents are estopped from denying liability for the medical services provided to the claimant at the emergency room of Santa Rosa Medical Center or by and at the direction of Dr. Nolan Snider. This also includes reasonable travel expense incurred by the claimant in obtaining the medical services provided him by and at the direction of Dr. Snider.
6. The respondents have denied the occurrence of any compensable injury to the claimant's lower back and have controverted this claim in its entirety.

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.

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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**

After my de novo review of the entire record, I must respectfully dissent from the majority opinion, because I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his back, for which he is entitled to medical and indemnity benefits. I concur with the majority opinion that the respondents are responsible for the emergency medical services provided to the claimant, and for the medical care provided to the claimant by and at the direction of Dr. Snider, including travel expenses.

In order to prevail upon a claim for a compensable injury, which is not a specific incident, identifiable by place and time of occurrence, the claimant must prove by a preponderance of the evidence that he sustained a back injury

causing internal or external harm to the body, which arose of out of and in the course of their employment, and which required medical services or resulted in disability or death. Ark. Code Ann. 11-9-102(4)(A)(ii)(b). In addition, the claimant must prove by a preponderance of the evidence that the injury was the major cause of the disability or need for treatment. Ark. Code Ann. Sec. 11-9-102(4)(E)(ii). Finally, the claimant must establish a compensable injury by medical evidence supported by objective findings. Ark. Code Ann. Sec. 11-9-102(4)(D).

The claimant was seen in a Florida emergency room on February 5, 2009 with severe pain in his back, which he related to driving. The ambulance personnel noted that the driver's seat was old, with no suspension. The claimant received treatment at the direction of the respondent-employer on February 12, 2009, by Dr. Snider for lower back pain, which the claimant related to driving a truck with a hard seat. Dr. Snider observed tenderness and performed a trigger point injection at his left mid-lumbar area. On February 26, 2009, Dr. Snider observed muscle spasms. The claimant reported continued pain and only brief relief during physical therapy. On that date, Dr. Snider diagnosed "lumbar strain, having low back pain and muscle spasms, pain started after a long drive in a truck with a bad seat." On March 27, 2009, the claimant saw Dr. Brown for low back pain, who diagnosed lumbar segmental dysfunction, pelvis segmental dysfunction, low

back pain, muscle spasm, sacrum segmental dysfunction and sacroiliac pain. The claimant saw Dr. Clarke on March 9, 2010 for pain in the lumbar region and low back and pain in his thoracic spine. Dr. Clarke stated that x-rays showed a grade 1 spondylolisthesis at L5-S1 with pars defect and minor degenerative changes, and a minor compression fracture of T12. There is no question that objective findings of injury exist.

The claimant testified that the only time he had ever experienced back pain was after driving a truck with a bad seat for the respondent-employer, once in February 2008, and beginning in February 2009. The claimant's symptoms resolved in 2008 when he switched trucks, and did not resume until he began his trip with a truck which was new to him. Those symptoms became so severe on February 4, 2009 that he could not operate the clutch and had to park at a rest stop. The driving logs show that the claimant drove approximately 23 hours over four days. The lack of adequate suspension in the claimant's seat over that period of time could reasonably be expected to cause back pain or to exacerbate a pre-existing condition to cause back pain. The medical records contain no history of prior back problems. The claimant initially complained to the ambulance personnel of pain in the thoracic area, particularly T12. The ambulance personnel also noted the poor condition of the driver's seat, that there was no suspension. Later examination by Dr. Snider revealed

lumbar pain as well, and the claimant related the pain to driving a truck with a hard seat. More than a year later, Dr. Clarke noted damage, via x-ray, at T12 and in his lumbar spine, consistent with his original complaints in February 2009. I find that the claimant, who had no back problems prior to his employment with the respondent-employer, developed back pain due to a defective seat in his truck, while performing employment services.

The record fully supports my finding that the claimant has proved by a preponderance of the evidence that the injury was the major cause of his disability and need for treatment. The claimant, by his own testimony and the medical records, did not have back pain prior to driving a truck with a defective seat and inoperative suspension for the respondent employer. The medical records show that Dr. Snider took the claimant off of work strictly for that back pain. In the claimant's visits to other medical providers, no other medical condition is identified as a cause for his need for treatment, his pain or his limitations. As in Parker v. Atlantic Research Corp., 87 Ark. App. 145, 189 S.W.3d 449 (2004), but for the claimant's work-related injury, there would have been no disability and no need for treatment. The Parker claimant had an asymptomatic pre-existing condition, which became symptomatic as a result of the work-related injury. Here, it is unclear whether the claimant was asymptomatic prior

to his injury, because he had no condition at all or just an asymptomatic one. There is no date given for the x-rays discussed by Dr. Clarke, which show some degenerative change. It matters not at all, because he was asymptomatic until he began driving the truck with the faulty seat.

I find that the claimant proved by a preponderance of the evidence that he sustained a compensable back injury, for which he is entitled to medical and indemnity benefits.

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

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PHILIP A. HOOD, Commissioner