

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F903153

DANNY GREEN, EMPLOYEE

CLAIMANT

HAMMONS FUNERAL HOME, UNINSURED EMPLOYER

RESPONDENT

OPINION FILED APRIL 4, 2011

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

Claimant appears pro se.

Respondents represented by the HONORABLE SHEILA F. CAMPBELL, 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 December 21, 2010.

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

1. The Workers' Compensation Commission has jurisdiction of this claim in which the employee-employer relationship existed in January and February 2009, at which time the claimant was earning sufficient wages to be entitled to a compensation rate of \$217.00, in the event this claim is found to be compensable. The claimant has received Social Security Disability benefits (\$1,000.00 per month) since

November, 2009. A lien has been filed by the Department of Workforce Education with Arkansas Rehabilitation Services.

2. The claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable injury, caused by a specific incident, arising out of and in the course of his employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.
3. If they have not already done so, the respondents are directed to pay the court reporter, Linda Parker's, fees and expenses within thirty days of receipt of the bill.

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 proved by a preponderance of the evidence that he sustained a compensable aggravation injury of the L5-S1 vertebrae on January 31, 2009. I would award all benefits associated with this injury.

As a threshold matter, I would allow the proffered testimony of Mr. Bobby Joe Adams. The Commission is not required to follow the strict rules of evidence and is supposed to allow evidence that helps the Commission best ascertain the rights of the parties. Mr. Adams' testimony regards the very issue that must be decided by the Commission, i.e., whether the incident on January 31, 2009 occurred. As such, I believe his testimony should be allowed.

The issue is one of credibility. Did the incident occur? Who should the Commission believe? The only people to testify who were there are the claimant, Mr. Adams, and Mr. Jarvis Hammond. The claimant has worked for the respondent since 1987. The claimant's credible testimony that the body shifted, requiring him to go down on one knee and lift it, is supported by that of Mr. Adams. Mr. Adams works for a third party. He has no interest in the outcome of this claim. He is the only uninterested party to testify. Mr. Jarvis Hammond, and his father, Mr. George Hammond, have a great interest in the outcome of this claim. They failed to procure workers' compensation insurance for their employees and will have to pay out of pocket if they lose this claim. As such, their testimony must be considered controverted.

Furthermore, contrary to the Administrative Law Judge's opinion, which was affirmed and adopted by the majority, the claimant's injury cannot be categorized as a recurrence of a 2005 injury. The January 31, 2009 incident is an independent intervening cause, breaking the chain of causation from the 2005 injury. 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).

Here, the medical evidence, particularly the deposition testimony of Dr. Reza Shahim, supports not only the claimant's testimony as to the specific incident, but it also supports an aggravation finding. The claimant healed after the procedures done on his back in 2005 and was able to successfully complete his job duties of lifting cadavers without incident until January 31, 2009. After January 31, 2009, the claimant was not again required to lift a heavy body until February 27, 2009, when it became apparent that he was not going to be able to continue his job duties.

In conclusion, I find the claimant to be a credible witness. The testimony of Mr. Adams and the medical records support his claim. I do not find the testimony of the Hammonds to be credible. They have a great financial incentive to win this case. Their reasoning for not procuring workers'

compensation insurance for their employees is suspect. In short, I find that the evidence preponderates in favor of the claimant.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner