

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G008741

MICHAEL D. GRICE,
EMPLOYEE

CLAIMANT

INTEGRITY, INC.,
EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED OCTOBER 3, 2011

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

Claimant appears Pro Se.

Respondents represented by the HONORABLE CAROL LOCKARD
WORLEY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed April 28, 2011. In said
order, the Administrative Law Judge made the following
findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has proven, by a preponderance of the credible evidence, that he sustained a compensable back injury in the form of a temporary aggravation of a pre-existing condition which was the result of a specific

incident identifiable in time and place of occurrence on July 26, 2010.

4. The claimant's healing period ended on or before August 19, 2010.
5. Although respondents initially paid benefits, including possible temporary total disability through on or about August 30, 2010, the claimant has failed to prove that he was entitled to any temporary total disability.
6. The claimant has failed to prove, by a preponderance of the evidence, that he is entitled to additional medical treatment as the result of the July 26, 2010, temporary aggravation.

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.

Therefore we affirm and adopt the April 28, 2011 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 concurs, in part, and dissents, in part.

CONCURRING & DISSENTING OPINION

I must respectfully concur, in part, and dissent, in part, from the majority opinion affirming and adopting the decision of the Administrative Law Judge. After a de novo review of the record, I find that the claimant sustained a compensable aggravation injury, and I would award additional reasonably necessary medical treatment. I agree with the majority that the claimant has not proved entitlement to additional temporary total disability benefits, and I concur on this point.

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).

A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated,

accelerated, or combined with the disease or infirmity to produce a disability for which compensation is sought. Nashville Livestock Commission v. Cox, 302 Ark. 69, 787 S.W.2d 664 (1990); Minor v. Poinsett Lumber & Manf. Co., 235 Ark. 195, 357 S.W.2d 504 (1962); St. Vincent Medical Center v. Brown, 53 Ark. App. 30, 917 S.W.2d 550 (1996).

Here, there is a pre-work incident MRI and a post-work incident MRI. The pre-work incident MRI shows that the claimant has a pre-existing back condition, thereby making this an aggravation claim. The pre-work incident MRI dated 4/7/2010 shows:

IMPRESSION: LEFT PARA SPINAL MUSCLE STRAIN IS NOTED AS DETAILED. MULTILEVEL DEGENERATIVE DISC DISEASE IS PRESENT WITH CHRONIC DEGENERATIVE DISC BULGES AND DISC PROTRUSIONS AS DETAILED. THE MOST PROMINENT INVOLVEMENT IS SEEN AT THE L4/L5 LEVEL WHERE THERE IS EVIDENCE OF SEVERE CIRCUMFERENTIAL THECAL SAC NARROWING DUE TO CENTRAL DISC PROTRUSION, FACET ARTHROPATHY AND EPIDURAL FAT PROLIFERATION

The post work injury MRI, dated 8/16/2010 shows:

IMPRESSION:
1. BROAD-BASED BULGE AT L2/L3 WITH AN EXTRAFORAMINAL BULGE ABUTTING THE NERVE ROOT OF L2 ON THE RIGHT.
2. AT L3/L4 THERE IS AN A BROAD-BASED DISC BULGE WITH AN EXTRAFORAMINAL BULGE ON THE RIGHT ABUTTING THE L3 NERVE ROOT.

3. BROAD-BASED DISC BULGE AT L4-/L5 WITH CENTRAL PROTRUSION IN ADDITION TO HYPERTROPHY OF THE LIGAMENTUM FLAVUM AND FACET HYPERTROPHY CAUSING A TIGHT CANAL STENOSIS. BILATERAL NEURAL FORAMINAL NARROWING IS PRESENT.
4....

The Administrative Law Judge, affirmed and adopted by the majority, acknowledges that the claimant has met all of the elements, including objective findings, of a compensable aggravation injury. However, the Administrative Law Judge, without any foundation, finds that the claimant sustained a "temporary aggravation" that ended on August 19, 2010. This is error. There is no such creature as a "temporary aggravation" in Arkansas workers' compensation law. A claimant either has a new injury or an aggravation. The end of the healing period is a question of fact. Here, the Administrative Law Judge states that the claimant's healing period ended on or before August 19, 2010, but makes no findings explaining why the healing period ended at this time. In fact, I find, as the MRI dated August 16, 2010 clearly shows objective findings of the claimant's compensable aggravation injury, the Administrative Law Judge's conclusion that the claimant's need for additional medical treatment is related to his pre-existing motor vehicle accident is

based on conjecture and speculation, which cannot substitute for proof. Ark. Dept. of Correction v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991). Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979).

For the aforementioned reasons I must respectfully concur, in part, and dissent, in part.

PHILIP A. HOOD, Commissioner