

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. F906433

DONALD MOUSE, EMPLOYEE	CLAIMANT
WORKSOURCE, EMPLOYER	RESPONDENT
LIBERTY MUTUAL INSURANCE CO., CARRIER/TPA	RESPONDENT

OPINION FILED FEBRUARY 3, 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 JAMES A. ARNOLD, II, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed July 21, 2010.

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

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on April 14, 2010, and contained in a pre-hearing order filed April 15, 2010, are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury

to his low back while working for the respondent on or about July 11, 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.

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A. WATSON BELL, Chairman

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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, because I find that the claimant has proven by a preponderance of the evidence

that he sustained a compensable injury to his low back, for which he is entitled to medical benefits and attorney's fees.

For the claimant to establish a compensable injury as a result of a specific incident, 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).

The claimant first complained on July 11, 2009 of leg pain related to work, in conjunction with a hot rash over most of both of his legs, which was addressed as an allergic reaction to chemical exposure at work. However, the claimant's right knee and lower leg pain and redness did not resolve, and on July 15, 2009, the company doctor's physician's assistant's focus turned to a potential blood clot in his leg. A blood clot was ruled out, but the claimant continued to have right lower leg pain,

which he attributed to work. He was given a steroid injection and returned to work by the company doctor's physician's assistant. On July 22, 2009, the company doctor diagnosed a healing soft tissue injury and released him to work. Finally, when the claimant presented to the emergency room on August 1, 2009, with right leg pain, starting in his back and going down the back of his leg, attention was turned to his spine. The claimant reported that he had the same problem weeks prior. He had a positive straight leg test on the right. He was assessed with back pain and sciatica. On August 5, 2009, Dr. Warren prescribed Flexeril, noting tenderness to the right lower back with radiating pain. On August 19, 2009, Dr. Warren prescribed Mobic and Hydrocodone. On September 23, 2009, Dr. Warren diagnosed right hip pain and lumbar radiculopathy, and renewed his Hydrocodone. He planned an MRI, which showed a focal right paracentral disk protrusion at L5-S1 displacing the central right S1 nerve root and resulting in moderate right paracentral acquired stenosis on October 16, 2009.

Note that the claimant's complaints, other than the resolving rash, did not change. He continued to complain of leg pain from the first July 2009 visit forward. I find that, while the allergic reaction to chemical exposure certainly required medical attention, it distracted the claimant and the medical professionals from the claimant's leg pain as a result of his

back injury. The claimant reported that the rash began that morning, causing his concern about a reaction to chemicals at work. I also find that the claimant began complaining of leg pain related to work at the time of his July 12, 2009 visit to the emergency room, and that his complaints of lower leg pain did not change throughout his course of treatment. I find that the consistency of his complaints and the fact that his complaints were made regularly between July 12 and October 16, when Dr. Warren found objective findings of injury in the MRI, support the conclusion that he sustained a back injury on July 10 or 11.

I recognize that the claimant is not a precise historian, but the medical records support his claim. He freely admitted that he had a history of hip pain, but that the pain which started in July 2009 was different than his hip pain. He was able to be specific about the differences in the types of pain, and the medical records of his history of hip pain do not contain the same complaints of pain in his lower right leg. He was clear that he had not experienced this type of pain before and that he was able to perform his job without restriction until he developed this pain while straining on July 10 or 11.

The MRI performed in October 2008 revealed a very minimal diffuse bulge at L3-4 and L4-5, with no evidence of central canal or foraminal stenosis. There was a mild diffuse bulge at L5-S1 with mild bilateral L5 foraminal narrowing and

mild facetal hypertrophy. However, the MRI performed in October 2009 showed a focal right paracentral disk protrusion at L5-S1, displacing the central right S1 nerve root, and resulting in moderate right paracentral acquired stenosis. In 2009, the claimant had right-sided symptoms which corresponded with right-sided findings in the 2009 MRI which were not present in 2008. Coupled with the fact that the claimant was able to perform his job until on or about July 10, 2009, when he developed right leg pain, the MRI findings support the causal connection between the claimant's work, his pain and his objective findings.

Furthermore, even if the condition of the claimant's spine was a pre-existing degenerative condition, it was asymptomatic prior to his work-related injury, and the claimant was able to perform his job. After the work-related injury on or about July 10, 2009, the claimant was unable to do so.

Lastly, the claimant was performing employment services, his sanitation duties, when his leg pain developed.

I find that the claimant proved by a preponderance of the evidence that he sustained a compensable injury on or about July 10, 2009, when he was picking up green beans for the respondent-employer and developed leg pain. I find that the claimant sustained a back injury at that time, which either caused the disc at L5-S1 to develop from a bulge without nerve involvement to a protrusion with nerve involvement, or which

turned the claimant's asymptomatic back condition into a symptomatic one. The claimant is entitled to medical benefits including by the QuickCare staff, Dr. Warren and his staff, Dr. Main, Dr. Halsell and the emergency room. I would also award an attorney's fee, as the claim was controverted, and the claimant required his attorney's services to obtain benefits.

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

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PHILIP A. HOOD, Commissioner