

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F213364

THOMAS B. QUEEN,  
EMPLOYEE

CLAIMANT

NORTEL NETWORKS, INC.,  
EMPLOYER

RESPONDENT

TRAVELERS PROPERTY & CASUALTY COMPANY,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED MARCH 29, 2011

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

Claimant represented by the HONORABLE H. OSCAR HIRBY,  
Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE PHILLIP  
CUFFMAN, 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 August 18, 2010. In said  
order, the Administrative Law Judge made the following  
findings of fact and conclusions of law:

1. The Workers' Compensation Commission has jurisdiction of this claim in which the employee-employer-carrier relationship existed on February 18, 2001, at which time the claimant was earning sufficient wages to entitle him to a compensation rate of \$410.00/\$308.00 in the event this claim is found to be compensable. The claimant's employment was terminated September 9, 2002. Some expenses have been paid by the claimant's

former group insurance carrier, United Healthcare.

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.

Therefore we affirm and adopt the August 18, 2010 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. I would reverse the decision of the Administrative Law Judge and award benefits to the claimant for his compensable injury.

The Full Commission, in affirming and adopting the Administrative Law Judge, found that the claimant did not have a definitive diagnosis supported by objective findings. However, Ark. Code Ann. §11-9-102(4)(A)(i) does not require a definitive diagnosis. It requires an injury, which among other things, caused harm requiring medical attention, and which is supported by objective findings. See Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The claimant was seen on February 19, 2001, with pain and swelling in his right arm, which he related to lifting a seventy-five pound tool box for work. An MRI of the shoulder was normal, but February 21, 2001, the claimant was seen again for right arm pain and swelling. Dr. McCrary noted swelling in the right hand, as well as decreased sensory function in the right hand and no sensory function at all in the right biceps. His left arm was also painful. The claimant does have objective findings of injury. Dr. McCrary observed swelling on February 21, 2001, and on February 19, the claimant complained of swelling which was not contradicted in the medical record. Also, the claimant underwent arthroscopy of the shoulder during which time "quite a bit of" erythema to the anterior synovium in the middle glenohumeral ligament and biceps tendon was observed, as well as mild fraying of the supraspinatus and infraspinatus tendons, which are more objective findings of injury.

I find that the claimant has proven by a preponderance of the evidence that he suffered a specific incident injury on February 18, 2001, in the evening, when he lifted a heavy toolbox out of his truck, which slipped and pulled hard on his arm. The

claimant also proved that this happened while he was performing employment services, as the claimant was loading his supervisor's vehicle with the one toolbox which needed to be added to that vehicle, so that the supervisor and the claimant could take one car to the job site. The tools were provided by the company, and the work site changed with each assignment. They did not report to a central location first. The claimant proved that he suffered an injury at that time, because he suffered pain and swelling which he reported that night, and which was observed by his supervisor and other employees and workers. The claimant saw a doctor the next day, with pain and swelling. There was no notation that the claimant did not have swelling on that date, and on February 21, Dr. McCrary observed swelling, as well as decreased and absent sensory function. In October, erythema in the shoulder and biceps and fraying of shoulder tendons was observed during surgery. The swelling, erythema and fraying are all objective findings. The claimant required medical services, because he had severe swelling and pain, as well as decreased and absent sensory function. Therefore, the claimant has established a compensable injury, for which he is entitled to benefits.

The claimant is entitled to reasonable and necessary medical benefits. The respondents and the majority focused on the fact that the claimant does not have a definitive diagnosis. Dr. McCrary suspected a rotator cuff problem or a cervical plexus injury. MRIs of the right shoulder and cervical spine were normal. An EMG study was consistent with a C5-6 brachial plexus injury. A later EMG study was normal. He had an arthroscopic surgery with subacromial decompression and acromioplasty in October 2001. In May 2002, Dr. David Collins diagnosed a traction injury, right upper extremity with initial nerve stretch, as well as shoulder pain with unknown etiology. He wanted to rule out internal derangement and rotator cuff tear. After a normal arthrogram and bone scan, Dr. Collins referred the claimant for a evaluation of a possible vascular lesion. Dr. Casali thought a subclavian vein encroachment or stenosis could be the problem. A venogram was normal. In November 2002, Dr. McCrary felt that the claimant's problem was actually a subclavicular steal syndrome. A neurologist, Dr. Mason, saw the claimant in January 2003, suggesting possible thoracic outlet syndrome, but finding no neurological issue requiring surgery. Skipping ahead several years, the

diagnosis in 2008 was again brachial plexus injury, as well as reflex sympathetic dystrophy. The neurological component of the injury is supported by the claimant's improvement on Carbatrol, according to Dr. Newbern.

The medical record demonstrates that there is a consistent thread of symptoms which the claimant's medical professionals have felt valid enough to perform extensive diagnostic testing to determine the cause. The claimant's current diagnosis is a brachial plexus injury and reflex sympathetic dystrophy, the treatment of which is providing the claimant with relief sufficient to allow him to work at light duty. I note that the claimant's functional capacity evaluation demonstrated that he gave reliable effort, which supports the truth of the claimant's complaints. I find that the claimant has successfully demonstrated that the medical treatment he has received, according to the records in evidence, was reasonable and necessary treatment of his stretching injury in which he first experienced pain and swelling. The claimant has also demonstrated that continued management of his condition is related to the original injury. The respondents are responsible for this additional treatment and the

treatment provided already, including the claimant's out-of-pocket expenses of \$52,341.05.

The claimant is also entitled to indemnity benefits, in the form of temporary total disability benefits from June 11, 2008 to August 4, 2008, while he was on disability status according to his doctor at the Cabot Medical Clinic. The claimant was unable to earn wages at this time due to his compensable injury, and he was still being treated and evaluated at that time, so still within his healing period.

I would award the claimant medical and indemnity benefits for his compensable injury. For the foregoing reasons, I must respectfully dissent from the majority opinion.

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PHILIP A. HOOD, Commissioner