

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G000863

WESLEY C. TILTON,
EMPLOYEE

CLAIMANT

INTERSTATE BRANDS CORPORATION,
EMPLOYER

RESPONDENT

ACE AMERICAN INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED MAY 3, 2011

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

Claimant represented by the HONORABLE ADRIENNE K.
MURPHY, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE ERIC NEWKIRK,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the
Administrative Law Judge filed January 14, 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 set forth above are reasonable and are hereby accepted.
3. Claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his lumbar spine.

4. Claimant has proven by a preponderance of the evidence that all of the treatment of his lumbar spine that is reflected in Joint Exhibit 1 and Respondents' Exhibit 1 was reasonable and necessary.
5. Claimant has proven by a preponderance of the evidence that he is entitled to additional reasonable and necessary treatment of his compensable lumbar spine injury.
6. Claimant has proven by a preponderance of the evidence that he is entitled to additional temporary total disability benefits from April 20, 2010 to a date yet to be determined.
7. Respondents have proven by a preponderance of the evidence that they are entitled to an offset under Ark. Code Ann. § 11-9-411(a) (Repl. 2002) for the treatment of Claimant's compensable lumbar spine injury that was covered by his group health insurance.
8. Respondents have not proven by a preponderance of the evidence that they are entitled to an offset under Ark. Code Ann. §§ 11-9-411(a) or 11-9-506(b) (Repl. 2002) for Claimant's alleged receipt of short term disability or unemployment benefits, respectively, because no evidence shows that he received either.
9. Claimant has proven by a preponderance of the evidence that he is entitled to a controverted attorney's fee on all indemnity benefits awarded herein, pursuant to Ark. Code Ann. § 11-9-715 (Repl. 2002).

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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the January 14, 2011 decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I respectfully dissent from the majority's opinion finding that the claimant proved by a preponderance of the evidence that he sustained a compensable lumbar injury on December 21, 2009. Based upon my de novo of the record, I find that the claimant has failed to meet his burden of proof.

In my opinion, a review of the evidence demonstrates that the claimant cannot prove by a preponderance of the evidence that he sustained a compensable injury on December 21, 2009, when he fell from his truck and injured his shoulder. First and foremost, the claimant did not complain to any medical providers, from the date of the accident until April 7, 2010, that he was having problems with his back. The claimant had numerous opportunities to tell his medical providers that he was having problems with his back. In

fact, the claimant testified that the back pain arose only "a couple of days after" the December 21, 2009 incident. He explained that his back pain grew "worse and worse". However, the claimant failed to report any problems with his back to his co-workers or his supervisor following the incident. The only time the claimant ever mentioned anything about his back was when he talked to his supervisor, Frank Drewery, on December 31, 2009, about getting permission to go back to the medical clinic for treatment because the medicine he was taking made him "loopy". Mr. Drewery stated that he told the claimant that he needed to mention it to the doctor. However, the claimant did not mention it to the doctor.

Further, the claimant stated that he was having problems with his back when he spoke to the claims adjuster, Ms. Francis Brown, on February 2, 2010. During that recorded conversation, the claimant told Ms. Brown that his shoulder was the only part that was hurt. He again spoke with Ms. Brown on February 4, 2010 and ,again, he reported he was only suffering from left shoulder problems.

The evidence demonstrates that the claimant was trying to become a horse trainer, and he owned five horses at the time of the hearing. In a May 3, 2010

medical record, the record indicated that the claimant owned several horses and has done a lot of horse training. He noted that the claimant also had experience with shoeing horses. The claimant attempted to discredit this evidence as saying that he had not ridden a horse since November of 2009. However, in the claimant's deposition, he stated that he had not ridden a horse since August of 2009. The claimant admitted at the hearing that he did not actually know the exact date.

Simply put, when I consider the fact that the claimant did not report problems with his back for over three months after the December 21, 2009 incident; the fact that the claimant did not mention back problems to the adjuster after having talked to her twice, even though he had stated that he was having problems at that time; and the fact the claimant's medical records from December 31, 2009 are devoid of any reference to back problems, I cannot find that the claimant has proved by a preponderance of the evidence that he sustained a compensable injury to his lumbar spine on December 31, 2009. Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority's award of benefits.

KAREN H. MCKINNEY, COMMISSIONER