

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F609346

ALBARO VIJIL, EMPLOYEE CLAIMANT

SCHLUMBERGER TECHNOLOGY CORPORATION,
EMPLOYER RESPONDENT NO. 1

TRAVELERS INSURANCE, CARRIER RESPONDENT NO. 1

SECOND INJURY FUND RESPONDENT NO. 2

OPINION FILED OCTOBER 11, 2011

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

Claimant represented by HONORABLE, DOUGLAS CARSON, Attorney at Law, Fort Smith, Arkansas.

Respondents No. 1 represented by HONORABLE JAMES ARNOLD, II, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by THE HONORABLE DAVID PAKE, 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 June 30, 2011.

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 February 18, 2009, and contained in a pre-hearing order filed February 23, 2009, are hereby accepted as fact.
2. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury on July 2, 2006.
3. The claimant has failed to prove that he is entitled to any benefits in this mater.

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's credible testimony, corroborated by the testimony of a coworker, Travis Rushing, proves by a preponderance of the evidence that he sustained a compensable injury to his cervical spine on July 2, 2006. This case has previously been reversed and remanded to us by the Court of Appeals to consider the testimony of Mr. Travis Rushing.

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, 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 worked for the respondent as an open-hole operator. This job involved carrying very heavy tools and equipment, including 20-foot-long, 300 to 400 pound pipes. The claimant explained that, in the shop, the employer had winches available for loading this equipment, and that winches were also available on the platform. However, no winch was available to move the tools and equipment from the truck to the platform.

On July 2, 2006, the claimant was working a shift which covered both July 2 and 3, 2006. The claimant testified that he was injured while lifting a very heavy

"FMI" tool from the truck to the "V-ramp" on the platform. The claimant testified that, because of the height of the "V-ramp", he used his shoulders to lift the tool. The claimant testified that, while lifting the tool:

I did feel a twitch of some sort, but I felt more pressure while loading them on my back. More of a pressure like a- like a muscle spasm in a sense. More pressure toward the midsection of my back towards the lung area. But it wasn't a detrimental twitch, I mean, you know, it came and went. But it felt like, you know, a spasm, a muscle spasm. And it's not of course until I saw the symptoms that early- on the third, that early morning on the third.

After the incident, the claimant worked the rest of his shift. However, he testified that he told his co-worker, Travis Rushing, during the shift, that he believed he had injured himself. The claimant stated:

My words to him was, I would like you to remember this day because I think I might have injured myself on lifting the, you know, on the job site lifting the equipment.

Travis Rushing, testifying via deposition, corroborated the claimant's account of reporting the

incident and injury to him on the July 2-3 shift. As the Court of Appeals recognized, Mr. Rushing's testimony is highly relevant in resolving the issue of what happened on the July 2-3 shift. Mr. Rushing is still an employee of the respondent. In 2006 he worked with the claimant. Mr. Rushing testified that they were working in the shop together when the claimant told him that his back and side of his leg were hurting. Even though Mr. Rushing did not remember the exact date of this conversation, he did remember that it took place "the day before we went to our Kellyville school." He remembered specifically that the conversation took place during a shift in which they worked through the night and into the following morning and then left around noontime to go to the school. The Kellyville training started July 4, 2006, so the shift in question was the July 2-3 shift. Mr. Rushing initially agreed that it "could be true" that the claimant also told him that he had hurt himself putting a tool onto a truck. But Mr. Rushing had his memory refreshed and testified as follows:

Q: When I talked to you previously, do you recall me asking you the question, quote, "Did he tell you exactly what he had been doing at the time he hurt his back" end of quote, and your response

was, quote, "Putting a tool onto the pickup truck," end of quote?

A: Yeah. Yeah. Yes, I do. I remember him saying he was putting a tool on the truck.

Clearly, Mr. Rushing, who was not impeached in any way, gave testimony that supports the fact that the claimant sustained an injury on the July 2-3 shift.

After the incident, the claimant reported to a training school in Oklahoma. During this time, he began experiencing numbness in his left leg but no pain, just numbness. After the training school finished, the claimant began seeking medical treatment for the numbness. His first medical contact concerning what was eventually found to be a cervical injury was with a cardiologist. Because the numbness had progressed towards the claimants mid-upper extremities, the claimant was concerned that he might be in danger of a stroke or heart attack. The cardiologist, not finding any issues within his specialty, referred the claimant to a neurologist. The claimant eventually came under the care of Dr. Michael Standefer. On September 5, 2006, Dr. Standefer stated:

This is a 45 year old Hispanic male who injured himself while lifting heavy

tools and equipment. He works for Schlumberger Oil Corporation. Over the last two months, he has had a gradual but definite progression of his symptoms and at present, has noted not only increasing problems with balance and coordination but also increasing numbness and tingling in both lower extremities and upper extremities.

On September 8, 2006, Dr. David Dean stated:

This patient had been working in Arkansas evidently on a well and had an on the job injury developing numbness in his left lower extremity and then subsequently into his chest and left upper extremity and then numbness in the fingertips of his right hand with a heavy sense of pain in his left precordium in July after he was transferring heavy tools onto a platform.

I find, based on the claimant's credible testimony of a lifting incident on July 2, 2006, the corroborating testimony of Mr. Rushing, as well as the medical evidence of Dr. Standefer and Dr. Dean, that the claimant sustained a compensable specific incident cervical injury on July 2, 2006. The fact that the claimant initially believed he had a cardiac emergency due to left side numbness is, I find, a reasonable reaction. Furthermore, I do not find the fact that the claimant testified that he initially experienced pain in his mid-back, not his neck, to be fatal to his

claim. Cervical injuries can refer pain to many parts of the body, which is well-exemplified in this claim. To deny this claim based on the claimant experiencing symptoms in parts of his body other than his neck, seems to be based more on the Administrative Law Judge's non-medical conclusion, rather than actual medical evidence.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner