

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H000809

STACY EVANS,
EMPLOYEE

CLAIMANT

EL DORADO PACKAGING, INC.,
EMPLOYER

RESPONDENT

CNA INSURANCE COMPANY,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED AUGUST 18, 2022

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

Claimant represented by the HONORABLE LAURA BETH YORK, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE KAREN H. McKINNEY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as Modified.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed January 12, 2022. The administrative law judge found that the claimant failed to prove he sustained a compensable injury. After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury.

I. HISTORY

The record indicates that Stacy Evans, now age 50, became employed with the respondents, El Dorado Packaging, Inc., in about 1995. The parties stipulated that the employment relationship existed at all

pertinent times, including January 27, 2020. The claimant testified that he was the respondent-employer's warehouse manager. The claimant testified on direct examination:

Q. We're going to talk about January 27, 2020. What did you – what time did you get to work that day?

A. 6:00 a.m....The supervisor told me that they were looking for a pallet. They don't know where it is. It's supposed to be shipping, but it wasn't down on the floor....I went on out there on the floor....I saw Vincent [Powell]. He was putting up some Tidy Cat rolls. I stood, like, from me to the judge, I think. We made eye contact....

Q. So maybe about five feet?

A. And so we made eye contact. And I was waiting on him because he's been there the longest, so if anything's missing, he'll find it. And he was loading. I mean, he was putting up product in the middle of this aisle, and then I was looking down. And I looked up, I made a step, and he was up on me....

Q. Can you describe to us the size – approximately the size of that forklift.

A. The forklift is the size of a midsize car. It weighs approximately, those that we use, about 15,500 pounds....

Q. So you were – had you had the opportunity yet to discuss with Mr. Powell the issues that had come up that morning?

A. No, I didn't because I got – I got hit....I tried to jump – shield myself and jump out of the way, but it still caught me....

Q. So you get hit by this forklift.

A. Yes.

Q. What part of the forklift hits you?

A. The butt side of this – of this – this side (indicating), which would be the right side –

Q. Okay.

- it hit me....

Q. Now, did anything impact your head when the collision occurred?

A. Yes. I got a gash right here (indicating)....

Q. So when you impact the ground do you recall what parts of your body struck the ground?

A. My – my – I bounced – my back, my – my head hit the concrete, kind of bounced around. I rolled – like I said, I rolled out of the way and I stayed stationary....

The respondents' attorney cross-examined the claimant:

Q. I'm showing you a document. Will you tell us whose letterhead is at the top?

A. (No response).

Q. This up here (indicating). What company is this on?

A. El Dorado Bag.

Q. El Dorado Bag. And what's the date on that?

A. January 21st.

Q. And what's the purpose of this document, what does it say-

A. I don't have my glasses. "Performance Importance Plan."

Q. "Performance Improvement Plan." And who's it for?

A. Mine.

Q. So this is your Performance Improvement Plan for – and it was dated January the 21st, 2020, correct?

A. Uh-huh. Yes.

Q. All right. Will you flip over to the last page of that document?

A. (Witness complies).

Q. And at the bottom down there, it has a place for you to sign. Would you agree with that?

A. Oh, yeah, I remember this.

Q. Do you agree it has a place for you to sign?

A. And I didn't sign it. I didn't agree with none that that.

Q. You didn't agree with it, so you refused to sign it, correct?

A. Yes.

Q. Turn it back over to that last page. I have a section highlighted....If you'll read that loud to the judge.

A. (As read), "I think they are fair to tell you your apparent performance in all areas outlined above placing you in for future of company in jeopardy."

Q. Okay. Keep going.

A. (As read), "You need to make immediate sustained improvements in your performance. Failure to improve will result in further disciplinary" – yeah. I remember that.

Q. "Further" –

A. I remember that meeting.

Q. (As read), “Further discipline up to and including termination.” Isn’t that what it says?

A. Yes.

Q. All right. And this was on January the 21st, correct?

A. I don’t remember.

Q. If the date of the document says January 21st –

A. Documents can be doctored, as I – as I’ve found out with that company, with Colleen Martin.

Q. Do you have any proof that this document has been altered?

A. Do you have any proof that it’s not?

Q. All right....I’m handing you another document. Again, what’s the letterhead on this document?

A. “Performance Warning Notice.” I don’t remember –

Q. And what’s the date of this?

A. January 24th....

Q. And this document is a written warning regarding your time off, is it not?

A. Yes.

Q. Can you read the highlighted sentence, there, or portion?

A. (As read), “Any further behavior and performance issues may result in further disciplinary action up to including immediate termination.”

Q. All right. And this is regarding – this document says you had a meeting on the 21st to discuss your performance plan, correct?

A. The – going forward, yeah....

Q. So you were being disciplined for not showing up at work right before this incident occurred. Is that correct?

A. I’m not for sure. What’s the question again? Go back again.

Q. You got a written warning right before this incident happened at work for not showing up at work. Isn’t that correct?

A. Yes.

Robert Moore testified that he had previously worked for the respondents on Building and Grounds. The respondents’ attorney examined Robert Moore:

Q. Were you at work on January the 27th, 2020, when the incident – the alleged incident with the forklift with Mr. Evans occurred?

A. Yes, I was at work that day.

Q. And did you see Mr. Evans around the area of Mr. Powell with the forklift?

A. Yes, I did.

Q. Can you tell us what you saw?

A. Well, I was on the back side, sweeping and cleaning up like I normally do every morning....

Q. So what did you see?

A. Mr. Evans was back behind Mr. Powell back there. He was pacing back and forth.

Q. Okay. So Mr. Evans was behind the forklift?

A. Right.

Q. All right.

A. He was behind the forklift. Mr. Powell was pulled in the pallet. He was reading the barcodes and stuff on there. And Mr. Powell had threw the forklift in reverse.

Q. How do you know he put it in reverse?

A. Because every time you put it in reverse, it's going to let you know. It's going to have a beeping noise. So it's going to beep every time you put it in reverse.

Q. So what happened after you –

A. So Mr. Powell threw it in reverse, but he was still up under the pallet. He never moved. And he was still reading the barcodes on the pallet and everything. So as he threw the forklift in reverse and everything, then that's when I saw Mr. Evans, he launched his self into the forklift and then he rolled on the other side and laid on the ground.

JUDGE PICKENS: What do you mean he launched himself into the forklift?

THE WITNESS: Like, he ran into it.

JUDGE PICKENS: Like, intentionally?

THE WITNESS: Yeah. Ran into it, and then he kind of rolled off on the other side of it and laid down there on the floor....It was just real funny....

Q. Did you at any time see the forklift move backwards?

A. No. He never moved the forklift at all.

Q. All right. And what about – could you continue to see the forks on the forklift? What was going on with that?

A. The forks was still up under the pallet. They – he never moved out from under the pallet.

The claimant's attorney cross-examined Robert Moore:

Q. So did you have a clear line of sight to Mr. Powell, or a clean line of sight –

A. I can see –

Q. – to Mr. Evans?

A. both of them very well. It wasn't but a few pallets back there where I was at. I mean, they were kind of spaced out a little bit. You can see and everything down....

Q. And why didn't you initially report it?

A. Well, I didn't – at first, I didn't. I went later on and – and did because I didn't want him – I didn't want that man to get fired for something I know he didn't do. I know he didn't hit that man with the forklift.

Q. You're talking about Mr. Powell.

A. Mr. Powell. I know he didn't – I know he didn't hit him.

Q. But you did see Mr. Evans come in contact with the forklift.

A. Right. He ran into the forklift.

The respondents' attorney examined Vincent Powell:

Q. Now, you were working on January the 27th on the day that Mr. Evans claims to have gotten hurt, you remember?

A. Yeah.

Q. What were you doing that morning?

A. Putting up Tidy Cat.

Q. And you were driving a forklift doing that?

A. Yes, ma'am.

Q. What's your title?

A. Shipping Clerk.

Q. And how long have you been the Shipping Clerk?

A. About 25 years....

Q. Now, if you're in your forklift, operating the forklift and the forks are in front of you, are you seeing Mr. Evans in front of you?

A. Nuh-uh. He was about – about two aisles over....

Q. But he's still in front of you.

A. Yeah.

Q. All right.

A. Eye contact.

Q. And did you make eye contact when he was in front of you?

A. Yeah. Yeah. Yes, ma'am.

Q. All right. When's the next time you saw Mr. Evans?

A. Next time I seen him, he was on the floor.

Q. Did you at any time see Mr. Evans behind you?

A. No. I seen – both my mirrors on the forklift, I had my reverse on, it was beeping. I seen a flash and that was it.

Q. All right. You turned your reverse on, so you were getting ready to back up.

A. Yes, ma'am.

Q. Did you start backing up?

A. No. Nuh-uh....

Q. What happened when you – when you saw the flash, what did you do?

A. When I seen Stacy on the floor?

Q. Yes.

A. I just stayed in the pallet.

Q. Okay. So your forklift –

A. Yeah.

Q. Did your forklift move?

A. No, nuh-uh. I was still in the pallet.

Q. Did you get off the forklift?

A. No. I stayed up there.

Q. Okay. At what point in time – did you ever get off the forklift and go check on Mr. Evans?

A. Yeah....I checked on him....That was about when everybody was coming up there....

Q. So Mr. Evans is on the ground, you set the emergency brake, turn the lights off and get off.

A. Yeah.

Q. What did you do after that?

A. I was going to get the secretary....Cashonna....

Q. Did you hit – did the forklift – had you started moving the forklift backwards at –

A. No, nuh-uh.

Q. Did you hit Mr. Evans with the forklift?

A. I don't think so. Couldn't have.

According to the record, the claimant treated at SAMA Healthcare on January 27, 2020:

This 48 yrs old Black/African Americ Male presents to ED via EMS – Ground with complaints of Fall Injury.

Trauma demographics: Location of injury: The injury occurred at work, knocked down by fork lift, forklift spun, blades striking him in chest, knocking him backwards to ground.

Associated injuries: The patient sustained injury to the head, tenderness, neck injury, pain, pain with movement, tenderness, upper back injury, tenderness, injury to the low back, tenderness, injury to the chest, specifically the left clavicle, anterior aspect of left upper chest and left breast, pain with breathing, pain with movement, tenderness, injury to the abdomen, specifically the left upper quadrant, tenderness.

Onset: The symptoms/episode began/occurred just prior to arrival. Associated signs and symptoms: Pertinent positives: abdominal pain, blurred vision, chest pain, headache, nausea, tingling. Loss of consciousness: the patient experienced a loss of consciousness. The patient has not experienced similar symptoms in the past....

Head/face: Noted is abrasion(s), that are mild, of the forehead....

Back: vertebral tenderness, is appreciated at T4, T5, L3 and L4, muscle spasm.

A CT of the claimant's head was taken on January 27, 2020 with the following findings:

The brain and ventricles are unremarkable. There is no mass effect or midline shift. There is no intracranial hemorrhage. IMPRESSION: No acute intracranial process.

A CT of the claimant's cervical spine was taken on January 27, 2020 with the impression, "No evidence of fracture or subluxation." An additional CT showed "No acute injury in the chest, abdomen, or pelvis."

A physician's impression on January 27, 2020 was "Sprain of ligaments of cervical spine, subsequent encounter, Contusion of left front wall of thorax, initial encounter, Contusion of unspecified back wall of thorax, initial encounter." The claimant was discharged to home.

Dr. Robert A. Watson, II reported on January 27, 2020:

He is a 48 year old male who comes in with a chief complaint of neck, head, back, leg and left rib pain. He also complains of a headache and blurry vision.

HPI: Patient states he was at work and was hit by a forklift. It knocked him down and he hit his head. He had loss of consciousness. They gave him mobic and Robaxin in the ER....

Musculoskeletal: Muscle spasms noted in back....

Dr. Watson's impression was "1) Concussion. 2) Loss of consciousness. 3) Rib Contusion. 4) Cervical Contusion. 5) Headache."

Dr. Watson planned, "We will see him back in 2 days."

A CT of the claimant's head was taken on January 28, 2020 and was compared with the CT of the claimant's head taken January 27, 2020:

History: The patient was hit by forklift yesterday with subsequent seizure. The patient then fell and struck his head with head pain post injury....

FINDINGS: The ventricles and cisterns are within normal limits for age, with no midline shift, mass effect, or intracranial hemorrhage. The calvarium is intact. The visualized paranasal sinuses demonstrate a chronic mucous retention cyst in the right maxillary sinus.

IMPRESSION: No acute intracranial findings.

The claimant followed up with Dr. Watson on January 29, 2020:

"Patient states he is still having a lot of pain in his back and head. His left

leg is tingling. He had to go back to the ER yesterday for possible seizure. They did a CT scan of his head and it was normal. He has weakness on the left side.” Dr. Watson’s impression was “1) Concussion. 2) Seizure Disorder. 3) Change in Mental Status. 4) Parathesia of Left Lower Extremity. 5) Rib Contusion. 6) Lumbar Pain. 7) Loss of consciousness.” Dr. Watson planned a referral for additional diagnostic testing.

An MRI of the claimant’s brain was taken on February 4, 2020:

HISTORY: Headache. Seizure around January 27, 2020....
FINDINGS: The craniocervical junction and sella are normal. No evidence of acute or subacute infarction is seen on the diffusion weighted images or ADC map. The ventricles and sulci are normal in size and appearance. Few tiny FLAIR hyperintensities in the subcortical white matter. Brain parenchymal signal is otherwise normal. No abnormal paramagnetic artifact on the gradient echo images. Normal vascular flow voids. The hippocampal structures are symmetric. No abnormal contrast enhancement. The orbits are normal in appearance. Mucosal thickening in the paranasal sinuses. Mucous retention cysts versus polyps in the right maxillary sinus.
IMPRESSION: 1. No acute intracranial abnormality.
2. Minimal microangiopathy.
3. Chronic sinus disease.

An MRI of the claimant’s lumbar spine was taken on February 4, 2020 with the following findings:

No intrathecal abnormality. No paravertebral lesion. No epidural lesion. No fracture.
No significant disc abnormalities at L1-2, L2-3 and L3-4. L4-5 disc demonstrates bulge, dorsal annular fissure and left paracentral protrusion. Mild facet hypertrophic degenerative

changes are seen. Result of these changes is mild indentation on left subarticular recess and left neural foramen. L5-S1 disc dorsal annular fissure with protrusion of bulging disc, causing indentation of thecal sac and mild indentation on neural foramina.

IMPRESSION: Degenerative changes at L4-5 and L5-S1 as noted above.

Dr. Watson's impression on February 5, 2020 was "1) Concussion. 2) Syncope. 3) Lumbar Pain. 4) Muscle Spasms. 5) Seizure Disorder." Dr. Watson planned, "We will get him an appointment with Neurology. We will set him up for physical therapy 3 x a week for 4 weeks....Patient is not supposed to be driving. We will see him back in 2 weeks."

The claimant began treating at Legacy Spine & Neurological Specialists on February 25, 2020. Dr. Rebecca Jones reported at that time:

Stacy Evans is a 48RHM who presents for evaluation and management of headaches, neck and back pain and left leg weakness after he was hit by a forklift at work on January 27, 2020. The patients (sic) says that the forklift knocked him to the floor and he hit his head, causing loss of consciousness for an unclear period of time. He was taken to an ER where a CTH was unremarkable. He was prescribed Mobic and Robaxin and was discharged.

Mr. Evans says that the next day while at a doctor's office he had a seizure in the waiting room. His wife describes that his eyes rolled back in his head and he began shaking, continuing for about 5 minutes. He did lose control of his bladder. An ambulance was called and he was taken back to the same hospital where he was observed and released.

Since then the patient has frequent staring spells that resolve when his wife talks to him. She says that he has had several days in which his personality has been different, describing his mood as "tacky and mean." She thinks these mood changes correlate with possible seizures. Mrs. Evans says

that last Monday the patient woke in the morning having wet the bed. He denies dizziness or insomnia.

The patients (sic) also says that the left side of his body is numb and weak since the accident. He is using a cane for balance.

MRI brain w/wo February 4, 2020: No acute abnormality.

Minimal microangiopathy. Chronic sinus disease....

Stacy Evans is a 48RHM who presents for evaluation and management of multiple symptoms after he was hit by a moving forklift at work. His headaches, emotional lability and cognitive impairment could be consistent with post concussion syndrome. His brain imaging is normal and his exam is, in my opinion, functional.

Dr. Jones diagnosed “Spells of altered consciousness, Dorsalgia, Left hemiplegia, functional, Left sensory deficits, unclear, Possible post-concussion syndrome, Headache, and Emotional lability.” Dr. Jones planned additional diagnostic testing.

Dr. Watson’s impression on February 27, 2020 was “1) Lumbar pain, 2) Concussion, 3) Syncope, 4) Seizure Disorder, and 5) Post Concussion Syndrome.” Dr. Watson increased the claimant’s dosage of Neurontin.

The claimant followed up with Dr. Watson on March 27, 2020: “Patient states he has not had any more seizure symptoms. His back still hurts. He can’t see his Neurologist until April 10th. The headaches are gone. The back pain scale is 7/10....Plan: The patient needs the physical therapy that we have already scheduled him for, but he did not go. He will keep his appointment with the Neurologist. He can return to work with light

duties. No driving at all. No standing over 4 hours per day. He can remain on light duty until he sees the Neurologist.”

Dr. L. Dichelle George reported on September 14, 2020, “Patient was hit by a forklift and knocked down in Jan at work and since he has been having headaches and back pain.” Dr. George assessed “1. Seizure. 2. Chronic post-traumatic headache, not intractable. 3. Pain in right knee. 4. Pain in left knee. 5. Other chronic pain.” Dr. George’s treatment plan included “Restarting patient’s medication for seizures and headaches. Will also refer to Neurologist. Will start on medication for arthritis for knee and back pain. Instructed patient to return with any worsening or no improvement.”

Dr. Jacquelyn Sue Frigon noted on November 18, 2020, “New patient being seen today with complaints of headaches, seizures....Hit by a forklift while at work in January. The next day when he was in Primary Care Physician office he had a seizures (sic). Wife reports he has had 6-7 seizures since then.” Dr. Frigon planned additional diagnostic testing, and she treated the claimant with medication.

An MRI of the claimant’s lumbar spine was taken on December 29, 2020 with the following impression:

1. Mild spondylosis as above in the lower lumbar spine, there is a small left paracentral protrusion at L4/L5 with central annular fissure.

2. No significant canal stenosis or foraminal narrowing in the lumbar spine.

An EEG was also performed on December 29, 2020. Dr. Frigon reported, “This EEG is within normal limits. A normal interictal EEG does not rule out the diagnosis of epilepsy.” Dr. Frigon’s treatment plan included “Walk/exercise daily/can walk on the treadmill on a slow speed. Use a cane.”

The claimant returned to Legacy Spine & Neurological Specialists on April 19, 2021:

This 49 year old male presents with low back pain that radiates into the posterior and anterior aspect of his right leg down to the knee. He states the pain is altogether bothersome. He complains of weakness in his leg. He denies any numbness, tingling, or burning. He states the pain occurred in January 2020 due to a work related incident but worsened in the past couple of months. He denies undergoing any physical therapy or chiropractic care. He denies undergoing any spinal injections. He has no history of spinal surgeries. He is prescribed Gabapentin 300mg and Meloxicam 7.5mg. He states he has undergone an EMG. He is scheduled for [an] MRI on 4/22/21 and a follow up appointment on 4/29/21 with Dr. Schlesinger to discuss further treatment.

An MRI of the claimant’s lumbar spine was taken on April 22, 2021 with the following conclusion:

1. Broad-based disc bulge, a central superiorly migrating 1.0cm disc extrusion with leftward orientation, associated annular tear and moderate facet hypertrophy at the L4-5 level with abutment of the bilateral exiting L4 nerves and abutment of the descending left L5 nerve.

2. Retrolisthesis, a broad-based disc bulge and moderate facet hypertrophy at the L5-S1 level with abutment of bilateral exiting L5 nerves.

The claimant began treating at Legacy Spine & Neurological Specialists with Dr. Scott Schlesinger on April 29, 2021. Dr. Schlesinger diagnosed “1. Low Back Pain. 2. Pain in leg, unspecified. 3. Intervertebral disc degeneration, lumbar region. 4. Spondylolisthesis, lumbar region. 5. Spinal stenosis, lumbar region without neurogenic claudication. 6. Intervertebral Disc Displacement, Lumbar Region. 7. Cervicalgia. 8. Pain in unspecified upper arm.”

Dr. Schlesinger reported on April 29, 2021:

This 49-year-old male presents with a chief complaint of low back pain. He does get radiation into the right leg. There is some moderate neural foramina stenosis at L5-S1 on the right but this does not appear to be significant enough to warrant surgical intervention. We will proceed with lumbar epidural injections starting translaminar at L5-S1 and then potentially translaminar at L4-5 and then lastly transforaminal at L5-S1....

It was noted on May 13, 2021, “Stacy Evans underwent a Lumbar Epidural Steroid Injection at Legacy Surgery Center today. The patient tolerated the procedure well and was discharged home without any complications.” The claimant also underwent a Lumbar Epidural Steroid Injection on May 27, 2021.

It was reported on behalf of Dr. Schlesinger on June 3, 2021:

This 49 year old male presents with improved low back pain that radiates into the posterior and anterior aspect of his right

leg down to the knee. He is s/p two LESI at L5/S1 completed on 5/27/21. He states that both his low back and right leg pain have significantly improved with the first two injections. He complains of weakness in his leg with prolonged standing. He denies any numbness, tingling, or burning....

All of these symptoms started after he was hit by a forklift while working on 1/28/20. He did not have any of these issues prior to the accident. He resigned because he could not longer safely perform these duties. He had issues with Workmen's comp and is now working with Rainwater, Holt, and Sexton. He did not seek treatment until recently due to Covid. He is not currently working due to the pain he is in. He states that he had multiple seizures after the accident as well and cannot drive....

For the low back, we will proceed with the final LESI as these are helping significantly. Dr. Schlesinger said that there is some moderate neural foramina stenosis at L5-S1 on the right but this does not appear to be significant enough to warrant surgical intervention. If this fails he has continued mainly back pain we will proceed with lumbar facet protocol. If he develops mainly leg pain we will proceed with an SNRB at L5-S1 on the right although it really does not look significant enough to warrant surgery but perhaps the retrolisthesis is made worse with standing and therefore perhaps the neural foramina narrowing becomes more profound.

Although the accident or injury may or may not have caused any radiological changes, I do feel that if the patient history is accurate and the symptoms all started with the accident then there is a greater than 51% chance that the accident did in fact cause the symptoms as was therefore the cause of the recommended treatment.

It was noted on June 10, 2021, "Stacy Evans underwent a Lumbar Epidural Steroid Injection at Legacy Surgery Center today. The patient tolerated the procedure well and was discharged home without any complications."

It was reported at Legacy Surgery Center on June 17, 2021:

This 49 year old male presents with improved low back pain that radiates into the posterior and anterior aspect of his right leg down to the knee. He is s/p final LESI at L5/S1 completed on 6/10/21. He reports 60% improvement of both the low back and right leg pain following the series. He complains of weakness in his leg with prolonged standing. He denies any numbness, tingling, or burning. The low back pain is the most bothersome complaint....

For the low back, we will proceed with bilateral L3-S1 lumbar facet protocol without steroids due to his recent issue with elevated glucose levels. As long as he has transient benefit with both blocks, we can proceed with a rhizotomy at these levels....

Although the accident or injury may or may not have caused any radiological changes, I do feel that if the patient history is accurate and the symptoms all started with the accident then there is a greater than 51% chance that the accident did in fact cause the symptoms as was therefore the cause of the recommended treatment.

It was noted on July 8, 2021, "Stacy Evans underwent a Lumbar Medial Branch Block at Legacy Surgery Center today. The patient tolerated the procedure well and was discharged home without any complications.

A pre-hearing order was filed on July 23, 2021. According to the text of the pre-hearing order, the claimant contended, "The claimant contends that on January 27, 2020, he was hit by a forklift in the scope and course of his employment. He was treated at SAMA Healthcare Clinic by Dr. Robert Watson, for injuries to his head, neck, back. The claimant contends he has been having seizures since the impact. The claimant contends he sustained compensable injuries in the scope and course of employment, and he is entitled to medical and TTD benefits in an amount to be

determined at trial, and his attorney is entitled to a fee. The claimant specifically reserves any and all other issues for future litigation and/or determination.”

The parties stipulated that the respondents “have controverted this claim in its entirety.” The respondents contended, “The respondents contend the claimant did not sustain a compensable injury(ies) arising out of his employment and, therefore, he cannot meet his burden of proof pursuant to the Act. Specifically, the respondents contend that *if* the claimant has sustained an injury(ies), any such injury(ies) is (are) idiopathic in nature, and not compensable pursuant to the applicable law as applied to the facts of this case. The respondents specifically reserve any and all other issues for future litigation and/or determination.”

The parties agreed to litigate the following issues:

1. Whether the claimant sustained a compensable injury(ies) within the meaning of the Arkansas Workers’ Compensation Act (the Act) to his head, neck, and lower back on January 27, 2020.
2. If the claimant’s alleged injury(ies) are deemed compensable, the extent to which he is entitled to medical and indemnity benefits.
3. Whether the claimant’s attorney is entitled to a controverted fee on these facts.
4. The parties specifically reserve any and all other issues for future litigation and/or determination.

A hearing was held on October 14, 2021. Cashonna Moore testified that she was employed with the respondents on the alleged date of

accident, January 27, 2020. The claimant's attorney examined Cashonna

Moore:

Q. Are you familiar with the incident in which Mr. Evans sustained injuries?

A. Yes.

Q. How did you come to find out that Mr. Evans was injured?

A. Well, that morning, I was sitting in my office, getting ready to go to our morning meeting, and Mr. Powell came in – Vincent came in and said, "I need you to come here." And I was like, "What for," because he's always joking around. Like, "What for?" He was like, "I – I just hit boss-man." And I'm like, "You did what?" I said, "Quit playing." I'm like – because he always joking around, like "Quit playing." He was like, "No, I actually – I just – I hit boss-man."

And so I got up and I ran out into the warehouse, and when I got out there, Mr. Evans was laying on the floor – on the ground....

Q. And it was Mr. Powell who was the one who came to you and said he had hit the claimant.

A. Yes.

The respondents' attorney cross-examined Cashonna Moore:

Q. You provided a written statement when this accident occurred. Isn't that correct?

A. Yes....

Q. Would you read it for us?

A. (As read), "Vincent Powell came into my office and stated that Stacy Evans was hurt. He then stated that he had been struck by the forklift. I went into the finished goods warehouse and found Stacy on the floor. I then called 9-1-1."

Q. And this is the statement you provided shortly after this incident occurred.

A. Yes....

Q. You didn't say in here that, "Mr. Powell said he hit the boss-man," did you?

A. No, I didn't say that in there. I was short-handing.

An administrative law judge filed an opinion on January 12, 2022. The administrative law judge found, among other things, that the claimant failed to prove he sustained a compensable injury. The administrative law judge therefore denied and dismissed the claim. The claimant appeals to the Full Commission.

II. ADJUDICATION

Ark. Code Ann. §11-9-102(4)(Repl. 2012) provides, in pertinent part:

- (A) “Compensable injury” means:
 - (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)(Repl. 2012). “Objective findings” are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(Repl. 2012).

The employee has the burden of proving by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Repl. 2012). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat’l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

An administrative law judge found in the present matter, “3. The claimant has failed to meet his burden of proof in demonstrating he sustained a ‘compensable injury’(ies) to his head, neck, and lower back in the subject alleged January 27, 2020, work incident.”

It is the duty of the Full Commission to enter findings in accordance with the preponderance of the evidence and not on whether there is substantial evidence to support an administrative law judge’s findings. *Roberts v. Leo Levi Hospital*, 8 Ark. App. 184, 649 S.W.2d 402 (1983). The Full Commission enters its own findings in accordance with the preponderance of the evidence. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348 (1990).

Ark. Code Ann. §11-9-401(a)(Repl. 2012) provides in pertinent part:

(2) There shall be no liability for compensation under this chapter where the injury or death was substantially occasioned by the willful intention of the injured employee to bring about such compensable injury or death.

A prima facie presumption exists that the injury was not occasioned by the willful intention of the injured employee to bring about the injury of himself or herself or another. Ark. Code Ann. §11-9-707(3)(Repl. 2012). However, the presumption is rebuttable, and the issue of whether it was overcome by the evidence is a question of fact for the Commission. *Eagle Safe Corp. v. Egan*, 39 Ark. App. 79, 842 S.W.2d 438 (1992). It is the Commission’s duty to translate the evidence of record into findings of fact.

Gencorp Polymer Prods v. Landers, 36 Ark. App. 190, 820 S.W.2d 475 (1991). It is also the Commission's function to determine the credibility of the witnesses and the weight to be given their testimony. *Whaley v. Hardee's*, 51 Ark. App. 166, 912 S.W.2d 14 (1995).

In the present matter, the Full Commission finds that the respondents rebutted the presumption that the injury allegedly occurring on January 27, 2020 was not occasioned by the willful intention of the claimant. The claimant testified that he was accidentally struck by the "butt end" of a forklift on January 27, 2020. The claimant testified that he had made "eye contact" with the forklift driver, Vincent Powell, but that Mr. Powell struck him with the forklift. The claimant testified, "My head hit the concrete, kind of bounced around. I rolled – like I said, I rolled out of the way and I stayed stationary."

The Full Commission expressly finds in the present matter that the claimant was not a credible witness. The claimant agreed on cross-examination that he was facing imminent disciplinary action for alleged workplace misconduct, and that such disciplinary action included possible termination of the claimant's employment with the respondents. There were two eyewitnesses to the alleged compensable injury. Robert Moore testified that he witnessed the alleged compensable injury. Robert Moore testified that the forklift operator, Vincent Powell, had placed the forklift into

reverse gear but that the vehicle was not moving. Robert Moore testified, “I saw Mr. Evans, he launched his self into the forklift and then he rolled on the other side and laid on the ground.” Vincent Powell testified that he was preparing to back up on the forklift but had not yet begun moving. Vincent Powell testified with regard to whether or not he struck the claimant with a forklift, “I don’t think so. Couldn’t have.”

The Full Commission finds that Robert Moore and Vincent Powell were credible witnesses. The Full Commission finds that the claimant willfully intended to injure himself at work on January 27, 2020. The evidence demonstrates that, in accordance with Robert Moore’s credible eyewitness testimony, the claimant “launched himself” into the forklift and then rolled to the ground. Vincent Powell credibly denied that he struck the claimant with a forklift on January 27, 2020. The Full Commission finds that Mr. Powell’s hearing testimony was more credible than Cashonna Moore’s testimony that Vincent Powell reported to her, “I hit boss-man.”

The Full Commission finds that the respondents rebutted the statutory presumption that the injury on January 27, 2020 was not occasioned by the willful intention of the injured employee. We find, in accordance with Ark. Code Ann. §11-9-401(a)(2)(Repl. 2012) and the probative evidence of record, that the claimant willfully intended to sustain an injury when he “launched himself” into a forklift. Moreover, the

claimant was not performing employment services at the time of the alleged compensable injury. At the time he purposefully launched himself into the forklift driven by Mr. Powell, the claimant was not carrying out the employer's purpose or advancing the employer's interest either directly or indirectly. The claimant was therefore not performing employment services at the time of the January 27, 2020 incident. *See Jivan v. Economy Inn & Suites*, 370 Ark. 414, 260 S.W.3d 260 (2007). *See also Kirshberger v. Frost Oil Co.*, 2014 Ark. App. 263 (Ark. App. 2014). The record accordingly supports the respondents' pre-hearing contention that the claimant did not sustain a compensable injury "arising out of his employment." *Jivan, supra*.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury. The evidence demonstrates that the claimant willfully intended to injure himself on January 27, 2020. In addition, the claimant was not performing employment services at the time of the alleged compensable injury. This claim is respectfully denied and dismissed in its entirety.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

CHRISTOPHER L. PALMER, Commissioner

Commissioner Willhite dissents.