

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. H103104 & H103105

DALE HARRIS, EMPLOYEE	CLAIMANT
NWA TOWING & RECOVERY, INC., EMPLOYER	RESPONDENT
ACCIDENT INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT NO. 1
AMERICAN INTERSTATE INSURANCE CO., INSURANCE CARRIER/TPA	RESPONDENT NO. 2

OPINION FILED JULY 7, 2022

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

Claimant represented by the HONORABLE MICHAEL L. ELLIG, Attorney at Law, Fort Smith, Arkansas.

Respondents No. 1 represented by the HONORABLE RICK BEHRING, JR., Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE ZACHARY F. RYBURN, 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 December 21, 2021. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on July 14, 2021, and contained in a Pre-hearing Order filed that same date, are hereby accepted as fact.

2. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his low back in November of 2019 while he was employed by the respondent employer who had workers' compensation insurance coverage through respondent carrier #1.
3. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his low back in October of 2020 while he was employed by the respondent employer and the respondent employer had workers' compensation insurance coverage through respondent carrier #2.
4. The claimant's contentions and/or issues regarding whether his back difficulties in October of 2020 were an aggravation or reoccurrence of his November of 2019 alleged injury are moot in that the claimant failed to prove by a preponderance of the evidence that he sustained a compensable injury in November 2019.
5. The claimant has failed to prove by a preponderance of the evidence that he is entitled to medical treatment or services in this matter.
6. The claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits in this matter.
7. The claimant has failed to prove that his attorney is entitled to an attorney's fee in this matter.
8. Respondent employer and respondent carrier #1 and respondent employer and respondent carrier #2's affirmative defense of notice is moot in that the claimant failed to prove that he sustained compensable injuries in both November of 2019 and October of 2020.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's December 21, 2021 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 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.

SCOTTY DALE DOUTHIT, Chairman

CHRISTOPHER L. PALMER, Commissioner

Commissioner Willhite concurs and dissents.

CONCURRING AND DISSENTING OPINION

After my *de novo* review of the entire record, I concur in part with but must respectfully dissent in part from the majority opinion. I concur with the

majority's findings that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his low back in November of 2019 while he was employed by the respondent employer who had workers' compensation insurance coverage through respondent carrier #1. However, I must dissent from the majority opinion finding that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his low back in October of 2020 while he was employed by the respondent employer and the respondent employer had workers' compensation insurance coverage through respondent carrier #2.

Although it is clear that the claimant suffered from a significant low back condition, I cannot say without speculation that this condition was caused by a work-related incident in November of 2019. Therefore, I am constrained to concur with the majority's finding on this issue. However, there does appear to be sufficient proof to support a finding that the claimant sustained a compensable low back injury in October of 2020.

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's low back injury meets the requirements for compensability. The claimant sustained an injury while performing employment services in October of 2020. There were objective findings of the injury in the form of a reherniation at L5-S1 on the right side as shown on an MRI taken on October 22, 2020. In addition, this injury required medical treatment in the form of an anterior lumbar interbody fusion.

Additionally, there is a clear causal connection between this injury and the claimant's October 2020 workplace accident. The December 7, 2020 medical record from Mercy Clinic contained a history of "he lifted a heavy tire and fell which resulted in an acute onset of radicular symptoms similar to prior to surgery".

Based on the aforementioned, I find that the claimant has established by a preponderance of the evidence that he sustained a compensable low back injury in October of 2020.

For the foregoing reasons, I concur in part and dissent in part from the majority opinion.

M. SCOTT WILLHITE, Commissioner