

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. H304075**

**TONY LEE LANGSTON, EMPLOYEE**

**CLAIMANT**

**L'OREAL USA, INC.,  
EMPLOYER**

**RESPONDENT**

**XL INS. AMER.,  
CARRIER**

**RESPONDENT**

**OPINION FILED FEBRUARY 22, 2024**

Hearing before Chief Administrative Law Judge O. Milton Fine II on November 30, 2023,  
in Little Rock, Pulaski County, Arkansas.

Claimant *pro se*.

Respondents represented by Mr. Lee J. Muldrow, Attorney at Law, Little Rock,  
Arkansas.

**STATEMENT OF THE CASE**

On November 30, 2023, the above-captioned claim was heard in Little Rock, Arkansas. A pre-hearing conference took place on September 11, 2023. The Prehearing Order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in that order.

**Stipulations**

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit 1. With an amendment of the fourth, they are the following, which I accept:

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1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/employer/carrier relationship existed on or about April 13, 2023, and at all other relevant times.
3. Respondents initially accepted this claim as compensable and paid medical and temporary total disability benefits pursuant thereto; but they have since controverted the claim in its entirety.
4. Claimant's average weekly wage of \$947.82 entitles him to compensation rates of \$632.00/\$474.00.

### Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit

1. After Claimant elected to reserve the issue of whether he is entitled to temporary total disability benefits, the following were litigated:

1. Whether Claimant sustained a compensable injury to his lower back by specific incident.
2. Whether Claimant is entitled to reasonable and necessary medical treatment.

All other issues have been reserved.

### Contentions

The respective contentions of the parties read as follows:

Claimant:

1. Claimant contends that he sustained a compensable injury to his lower back by specific incident on or about April 13, 2023, and that he is entitled to reasonable and necessary medical treatment therefor.

Respondents:

1. Respondents dispute the injury account given by Claimant. There is no objective evidence of an injury. To the extent that Claimant has health issues, they did not arise out of or in the course of his employment.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record as a whole, including medical reports, deposition transcript, non-medical documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

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 not proven by a preponderance of the evidence that he sustained a compensable injury to his lower back by specific incident.
4. Claimant has not proven by a preponderance of the evidence that he is entitled to reasonable and necessary medical treatment of his alleged lower back injury.

**CASE IN CHIEF**

Summary of Evidence

The hearing witnesses were Claimant and William Castner.

In addition to the prehearing order discussed above, admitted into evidence in this case were the following: Commission Exhibit 2, an email from Respondents' counsel to Claimant (copying, inter alia, the undersigned) dated November 21, 2023, regarding exhibits and witnesses, consisting of one page; Claimant's Exhibit 1, a compilation of his medical records, consisting of 37 pages; Claimant's Exhibit 2, work/school excuse slips, consisting of two pages; Respondents' Exhibit 1, another compilation of Claimant's medical records, consisting of one index page and 34 numbered pages thereafter; Respondents' Exhibit 2, a flash drive containing video footage; and Respondents' Exhibit 3, a photograph of the forklift and damaged trailer flooring related to the incident at issue.

Also, I have blue-backed to the record the post-hearing briefs of Respondent, filed on December 13, 2023, and consisting of four numbered pages.

Adjudication

A. Compensability

Standards. Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2012), which I find applies to the analysis of Claimant's alleged lower back injury, defines "compensable injury":

- (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

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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 that cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16).

If Claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

Discussion. Claimant has asserted that while working for Respondent L’Oreal USA (“L’Oreal”) on April 13, 2023, he suffered a compensable injury to his lower back when a forklift that he was driving fell through the floor of a trailer in which he was operating the equipment. Respondents do not dispute that Claimant was performing employment services at the time of the alleged incident. Indeed, the video footage of the incident, discussed more fully *infra*, readily shows this. Instead, they have asserted that no compensable injury resulted from this.

Claimant, who is 55 years old and has a graduate equivalency degree, along with a certification of completion of an automotive program from Arkansas State University-Searcy, testified that he has been employed at L’Oreal since August 2001. He began

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working at the company's manufacturing facility in North Little Rock as a forklift operator in early 2022.

Asked what happened at work on April 13, 2023, he related:

Well, I was—I was working in Receiving and I was unloading a trailer, and—and so I had already unloaded two trailers or whatever, and—and so I was starting on the third trailer but it was about empty. I mean, it had like five stacks, five stacks left on—on—on the third trailer, so I left—I saved that for last. And when I went in there to start unloading the trailer, I brought out a stack that was—it was just one stack in the front, but it was two more stacks behind it, so it was like five stacks just on the trailer. And so the—the—the first stack I brought out was on the right side, and—and I—I picked it up and brought it out and put it—put it where it was supposed to have been. So I went back, I went back in to—to grab the other stack. I was kind of feeling—the floor was kind of jumping a little bit but I done been in several trailers like that and—and never had no issues. But as I was coming back, I—I picked up the—picked up the other stack and was coming back out of the trailer and I got—I got almost halfway, about halfway in the trailer—out the trailer and was in the middle of the trailer and the floor just—the floor, I'm going back like this (demonstrating) and—and—and the forklift just all of a sudden just dropped it, fell to the floor with it . . . [s]o as I'm coming back out the trailer, all of a sudden my forklift just hit real hard through the floor . . . [t]he forklift—the floor gave in and the forklift went through—the back—the back tire went through the floor with it.

Claimant continued:

The head pain hit so hard or whatever, caught me off guard or whatever and kind of terrified me really. I wasn't expecting that. And so, you know, I never did—I mean, it wasn't—at that time—I mean, when it—when it hit like that or whatever, I was so scared I—I felt like the forklift was going upward like that or something, and—and all I could do was "Lord—Lord, help me," like that. And when I said that, it seemed like everything just went white for a second, and—and after that, I really—whatever went on in the trailer after that right there, I mean, I don't really know. I mean, I been thinking about it myself, but really don't know. But I remember getting on the radio and calling my supervisor or whatever. I had to—I had to use the bathroom. I don't know if I used the bathroom on myself at the time. I was hurting when I—I don't—I don't remember getting off the forklift or whatever.

I had to—I had to use the bathroom. I don't know if I used the bathroom on myself at the time. I was hurting when I—I don't—I don't remember getting off the forklift or whatever. But after I called my—called my supervisor, I was letting him know it was an emergency to come to the Receiving, but I'm trying to hurry up and get to the bathroom. I'm about to use the bathroom on myself. And so I get to the bathroom and I come out. After I come out of the bathroom and finally meet my supervisor or whatever, at first I went back and just—it was burning and I had a burning sensation right there, but I—I had to go to the bathroom, and that's when everything just—it hit me, you know what I'm saying, pretty hard and I was trying to keep my composure 'cause I was at work, didn't want to see nobody seeing me get down bad like that.

In his testimony, Claimant stated that his supervisor, Phillip Kelly, wanted to take pictures of the trailer floor. He asked Claimant to drive the forklift and move any pallets that he would move to the back of the trailer by way of a pallet jack. But Claimant continued:

After I tried to get up on my forklift or whatever, I couldn't and felt like I—felt like my—felt like something in my back has had—flipped—like a bone or something flipped, and—and I couldn't just stand up straight. And so—I mean, all—I mean, it's kind of hard to describe, but I couldn't get up on the forklift . . . I was in so much pain. I was trying to hold it in and I was—I was moaning and—and all—I was just tensed up tight the whole time trying to ease the pain a little bit, but I—I couldn't—I couldn't—I couldn't finish my job. I had to go to Health Service and all—you know, so we could do what we had to do there, and I was—I was trying to get out and go home really 'cause I didn't want to be at work like that. I knew I wouldn't be able to do nothing.

Claimant elaborated that as he was backing the forklift out of the trailer, the left rear wheel of the vehicle fell through the wooden floor. As a result, he experienced a sudden onset of burning pain in his lower back that rendered him unable to sit down. Because he was upset about what occurred and was in so much discomfort, Claimant never returned to the trailer and visualized the hole in the trailer into which the forklift

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wheel had fallen. He acknowledged that he does not remember whether or not he drove the forklift out of the trailer after the incident in question. He explained that he “was so terrified at the time . . . it was a scary experience or whatever . . . [i]t hit so hard . . . .”

It was Claimant’s desire at that point simply to go home. But in order to receive permission to leave work early, he first had to go to Health Services at the plant. Because he was physically unable to drive the forklift there, Claimant was taken by golf cart to Health Services. He stated that his medical records in evidence would detail the treatment that he has undergone. While he is contending only that he suffered a compensable injury to his lower back, Claimant related that he also treated for symptoms in his chest that he attributed to his ribcage being struck when the wheel went through the floor. The jarring motion was what caused the burning pain in his lower back; the forklift did not strike the side of the trailer.

After arriving at Health Services, Claimant spoke by phone with Castner. He instructed personnel to place a bag of ice on Claimant’s back before he could leave for home, and let Claimant know that he could call him with any questions or concerns. After 15 minutes of this application, Claimant was escorted to his car. The drive to his house was difficult, according to him, because of his back condition. Upon his arrival at the parking lot of his apartment building, Claimant experienced difficulty exiting his vehicle because of his back condition; he was unable to raise his leg. He contacted his brother, who convinced him to go to the hospital. They went to the emergency department of Baptist Health.

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On cross-examination, Claimant was asked about the history portion of the emergency room record, which reads in pertinent part:

Tony L. Langston, 54 yo M, presents to ED for evaluation after a fall. Patient states he was operating a forklift for work at around 7PM today when the forklift had suddenly fallen through the flooring. **Patient reports he had to climb out of the hole after the incident.** Now reporting of left flank, left back, and left chest pain. Patient states he did not immediately follow up after incident reporting he had gone home.

(Emphasis added) Attempting to explain the discrepancy between his testimony and the highlighted language, Claimant stated that it was his brother—not he—who told treating personnel that he had to climb out of the hole. When questioned further by the Commission, he added that the timeline in the above report is incorrect as well; the alleged trailer incident happened around 7:30 to 8:00 p.m. As a result of his visit to Baptist Health, he was administered a Fentanyl injection and prescribed three medications. He could recall the names of two: Naproxen and Hydrocodone. Claimant did not remember whether, as reflected in the report of his visit, he was also prescribed Cyclobenzaprine (Fentanyl) “as needed for [m]uscle spasms.” Later in his testimony, however, he related that he remembered being given a prescription for Cyclobenzaprine.

Called by Respondents, William Castner testified that he has been employed for Respondent L’Oreal for two and one-half years as the manager in the Environmental, Health and Safety department. Castner stated that he is familiar with Claimant and with the incident at issue. Claimant had been operating a forklift, which he termed “a sit-down counterbalance lift truck.” He added:

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Tony, Mr. Langston, was unloading a trailer. We use Davis Trailers to trans—transport pallets from Davis Storage Warehouse in town over to our facility, and he was unloading a Davis trailer. He was unloading pallets, a double stack, and as he started to back out of the trailer, there was a weak spot in the trailer and it created a divot, and he—the truck stopped. He got off the truck and called for assistance.

Castner viewed the video footage—which was played in open court—that is contained on Respondents' Exhibit 2. He confirmed that it depicts the incident at issue, described above. The L'Oreal plant has numerous video cameras mounted throughout the facility. The footage, 241 seconds in length, was recorded and played in real time. While the footage does not bear a time or date stamp, Castner testified that he requested that the plant's security team furnish him with footage from the camera that viewed the trailer in question at the time in question—and that this is what he was given. It depicts Claimant driving the forklift into the trailer on the left side of the screen (two dock doors are shown). At 1:06, he enters the trailer (it is at that point that the forks cross the boundary between the dock and the trailer). The floor of the trailer is wood planking with a metal seam that is in the center and runs from the rear toward the front. There is a square-shaped portion of the flooring that is noticeably lighter in color than the surrounding wood—indicating that it is newer and served as a patch or replacement. The forklift, which had disappeared from view as it ventured further into the trailer, reappears at 1:36, being driven in reverse by Claimant. At 1:44, the vehicle stops backing up; it appears to be stuck. Slight movement back and forth (as opposed to side to side) is visible, indicating that the operator is trying to extricate the forklift. Finally, at 2:00, the forklift returns to the front of the trailer, away from the rear door. When this

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occurs, a dark spot in the lighter portion of the wood comes into view, just to the left of the metal seam. The movement of the left rear tire of the forklift exposes this spot; and the footage makes apparent that it was this tire that created the spot. Per Castner, this is a “divot.” Only a very small portion of the left rear of the vehicle remains in view. At 3:17, Claimant reappears, apparently exiting the forklift. He is dragging his left foot slightly. However, Claimant does not seem to be in any apparent discomfort.

The following exchange occurred:

- Q. Now, you were saying to me [Respondents’ counsel] before the hearing began, Mr. Castner, that there is a device on the equipment that notifies the operator and also sends an email where there’s any type of traumatic—or any type of impact?
- A. Yes. I—I wouldn’t say traumatic, but any type of—it prevents damage to the facility or damage to anything. It notifies us when the forklift has an incident, if it hits a guardrail, if it hits racking, if it has any type of impact.
- Q. Would that include an impact that would be caused by the vehicle going down into a hole?
- A. Horizontal and vertical, yes.
- Q. Yes. And what—what would the alarm sound like?
- A. So it’s audible and visual.
- Q. All right. And would that alarm also be obvious to others who were not on the vehicle?
- A. Yes.
- Q. And how is that—how is that information conveyed?
- A. To—to the leadership team or the management team, it comes by email and then focused in here, it’s again audible and visual to say, “Hey, this forklift hit something.”

Q. All right. Do you have—does the company have record of whether or not on this day at this time there was any type of email suggesting that the alarm system was alerted to an impact?

A. There was not.

According to Castner, he was informed by other personnel that Claimant had been involved in an incident. He called Claimant to find out how he was feeling. Per Castner, Claimant told him “that he was fine and he was not injured and that he just wanted to go home and rest.” Claimant was given Castner’s number, told to call him if he had any issues, and was informed that Castner would get him to see a physician if Claimant felt he needed treatment. However, instead of doing this, Claimant went to the hospital that same evening but neglected to inform Castner of this until the next afternoon.

Shown Respondents’ Exhibit 3, Castner identified it as one of the photographs taken by Claimant’s supervisor, Kelly, at Castner’s request of the scene of the incident at issue. Castner stated that the photograph depicts the right rear tire of the forklift near the “divot.” His understanding from Kelly is that the photograph was taken before the forklift was backed out of the trailer. He elaborated:

So they moved it [the forklift] out of the divot, and before they were going to back out of the trailer, they got the photo, and that’s why that’s the right side of the forklift and not the left side that was involved in the divot.

In reference to the foot-dragging by Claimant described above in the security footage, the following exchanges took place:

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- Q. When Mr. Langston, on this video, walked out of the trailer—you saw that on the video—did you see anything unusual about his walk or his gait?
- A. Yeah. Tony has a—Mr. Langston has a—just an unusual gait when he walks, just—you know, just the normal way that he walked, you know.”
- Q. From the standpoint of what you knew about the way he walked and the way he was walking in that video, did you see anything different?
- A. Nothing unusual, no . . . [s]o Tony—I’ve never had an issue with Tony. Tony was actually one of our first responders, so I knew Tony pretty well and I would see Tony almost on a daily basis . . . [s]o I was very familiar with Tony, and we’d say hi, you know, periodically, and I would see him as he comes in for second shift as he would walk in the facility and just—he just had like a—I wouldn’t call it a limp but he just—I don’t know—it was just a different gait, like a different walk, so.

The medical records in evidence show that approximately eight months before the forklift/trailer incident, on August 4, 2022, Claimant presented to Dr. Shiva Nallur at CHI St. Vincent with, inter alia, upper back pain that had begun one to two weeks before. He related to Nallur that he drives a forklift. The doctor administered a Depo Medrol injection and prescribed both Diclofenac and Cyclobenzaprine.

On the day of the forklift/trailer incident, April 13, 2023, Claimant presented to the emergency department of Baptist Health. The report reads in pertinent part:

Tony L. Langston, 54 yo M, presents to ED for evaluation after a fall. Patient states he was operating a forklift for work at around 7PM today when the forklift had suddenly fallen through the flooring. **Patient reports he had to climb out of the hole after [the] incident.** Now reporting of left flank, left back, and left chest pain. Patient states he did not immediately follow up after [the] incident reporting he had gone home. Patient does not report LOC and has no other complaints at this time.

**The history is provided by the patient.**

...

The accident occurred 1 to 2 hours ago. Fall occurred: Was operating forklift when forklift had fallen through flooring. Associated symptoms include abdominal pain.

...

54-year-old male that presents [to the] emergency department after a fall. Patient was reportedly . . . on a forklift when the floor gave way.

(Emphasis added) Dr. Komi Vovor-Dassu, the attending physician, examined Claimant and did not note the presence of any objective findings of an injury. A CT scan of the abdomen and pelvis and x-rays of the hip and chest were negative. Along with Hydrocodone and Naproxen, Claimant was prescribed Cyclobenzaprine “as needed for [m]uscle spasms . . . .”

Claimant returned to CHI St. Vincent on April 19, 2023, and per the report thereof, “present[ed] to [the] clinic for acute lower back pain. **He reports he fell at work** on Thursday and injured his back . . . .” (Emphasis added) A Toradol injection was given to him. No objective findings from the examination are listed in the notes by Katia Ryburn, APRN. In a follow-up visit to the clinic on April 27, 2023, Claimant was still representing that he was suffering from lower back pain as a result of “a fall while at work.” Again, the examination yielded no objective findings of an injury. He was prescribed Hydrocodone. Claimant returned to the clinic yet again on May 30, 2023, and saw Dr. Kalyan Kancherla. As before, the record is devoid of objective findings of an injury of any type.

The compensability element “arising out of . . . [the] employment” relates to the causal connection between the claimant’s injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant’s employment “when a causal connection between work conditions and the injury is apparent to the rational mind.” *Id.*

In this case, assuming only for the sake of argument that Claimant has established objective and measurable findings of a lower back injury (*see Estridge v. Waste Mgmt.*, 343 Ark. 276, 33 S.W.3d 167 (prescription of Flexeril “as needed for muscle spasm” tantamount to objective finding of muscle spasm); *Melius v. Chapel Ridge Nursing Ctr.*, 2021 Ark. App. 61, 618 S.W.3d 410), he has not shown a causal connection between such a finding and what occurred on April 13, 2023, in the trailer at the L’Oreal plant. The account related to treating personnel that evening at the Baptist Health emergency department—that Claimant’s forklift fell into a hole in the trailer floor so deep that he had to climb out of it—was, as he admitted on the witness stand, untrue. While Claimant attributed this inaccuracy to his brother and not him speaking with treating personnel on that occasion, the medical records do not support this. The record is unambiguous that it was Claimant who furnished this history. Furthermore, this would not explain Claimant’s later history that he relayed to CHI St. Vincent: that he fell.

The discrepancies do not end there. Claimant’s testimony concerning the forklift incident was that the left tire suddenly fell through the floor, and that this jarring motion caused his injury. The video footage of the incident, described in detail above, does not

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support this version, either. What is clear is that, as Castner accurately described, a “divot” or indentation appeared in the trailer floor as that portion of it buckled under the weight of the forklift. But the wheel hardly “fell through”; rather, as the video shows, Claimant was able after a few tries to drive the vehicle out of the indentation. Additional support for the finding that any impact of the floor giving way was not unduly jarring is the fact that, as Castner credibly testified, the impact alarm on the forklift was not triggered in this incident. Finally, in contrast to his testimony, the video evidence does not depict him as leaving the trailer in any perceptible amount of distress.

In sum, Claimant has not proven by a preponderance of the evidence that he suffered a compensable lower back injury.

B. Medical Treatment

Introduction. Claimant has alleged that he is entitled to reasonable and necessary medical treatment in connection with his alleged lower back injury.

Standards. Arkansas Code Annotated Section 11-9-508(a) (Repl. 2012) states that an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant’s injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown, supra*; *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). What

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constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001).

As the Arkansas Court of Appeals has held, a claimant may be entitled to additional treatment even after the healing period has ended, if said treatment is geared toward management of the injury. *See Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004); *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Such services can include those for the purpose of diagnosing the nature and extent of the compensable injury; reducing or alleviating symptoms resulting from the compensable injury; maintaining the level of healing achieved; or preventing further deterioration of the damage produced by the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995); *Artex, supra*.

Discussion. Because Claimant has not established that he sustained a compensable lower back injury, he has not met his burden of proving his entitlement to reasonable and necessary treatment of it.

### **CONCLUSION**

In accordance with the Findings of Fact and Conclusions of Law set forth above, this claim is hereby denied and dismissed.

**IT IS SO ORDERED.**

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Hon. O. Milton Fine II  
Chief Administrative Law Judge