

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G807027

DAVID L. BURKHOLDER, EMPLOYEE CLAIMANT

ACME BRICK COMPANY, EMPLOYER RESPONDENT NO. 1

TRAVELERS INSURANCE COMPANY  
INSURANCE CARRIER/TPA RESPONDENT NO. 1

DEATH & PERMANENT TOTAL DISABILITY  
TRUST FUND RESPONDENT NO. 2

OPINION FILED JULY 19, 2022

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

Claimant represented by the HONORABLE EDDIE H. WALKER, JR.,  
Attorney at Law, Fort Smith, Arkansas.

Respondents No. 1 represented by the HONORABLE GUY ALTON WADE,  
Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE CHRISTY L. KING,  
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 February 15, 2022. 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 September 1, 2021, and contained in a Pre-hearing Order filed September 2, 2021, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that he sustained a thoracic spine fracture on November 27, 2020 as a compensable consequence of his March 20, 2018 compensable low back injury.
3. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable cervical spine injury and left shoulder injury on November 27, 2020 as a compensable consequence of his March 20, 2018 compensable low back injury.
4. The claimant is able to prove his entitlement to medical benefits regarding his thoracic spine fracture.
5. The claimant is unable to prove his entitlement to medical benefits regarding his cervical spine and left shoulder injuries.
6. Respondent #1 has raised the statute of limitations defense; however, that defense is moot in that the claimant has not claimed any injury in the current matter dating prior to the November 27, 2020 fall which is a compensable consequence of his compensable injury. Respondent #1 is unable to prove that the Statute of Limitations has run as it relates to the claimant's compensable consequence fall of November 27, 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 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 February 15, 2022 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.

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SCOTTY DALE DOUTHIT, Chairman

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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 (1) the claimant has proven by a preponderance of the evidence that he sustained a thoracic spine fracture on November 27, 2020 as a compensable consequence of his March 20, 2018 compensable low back injury; (2) the claimant has failed to prove by a preponderance of the evidence that he sustained a left shoulder injury on November 27, 2020 as a compensable consequence of his March 20, 2018

compensable low back injury; (3) the claimant is able to prove his entitlement to medical benefits regarding his thoracic spine fracture; (4) the claimant is unable to prove his entitlement to medical benefits regarding his left shoulder injury; and (5) Respondent #1 is unable to prove that the statute of limitations has run as it relates to the claimant's compensable consequence fall of November 27, 2020. However, I must dissent from the majority opinion finding that the claimant failed to prove that he sustained a compensable cervical spine injury on November 27, 2020, as a compensable consequence of his March 20, 2018, compensable low back injury and that the claimant is unable to prove his entitlement to medical benefits regarding his cervical spine injury.

The Arkansas Courts have on several occasions considered claims for benefits for alleged "compensable consequences" and in each case, the Court has essentially indicated that:

When the primary injury is shown to have arisen out of and in the course of employment, the employer is responsible for any natural consequence that flows from that injury; the basic test is whether there is a causal connection between the two episodes.

*See generally Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001); *Air Compressor Equipment v. Sword*, 69 Ark. App.

162, 11 S.W.3d 1 (2000); *Jeter v. B.R. McGinty Mech.*, 62 Ark. App. 53, 968 S.W.2d 645 (1998).

The claimant suffered an admittedly compensable low back injury on March 20, 2018. The claimant testified that following his March 20, 2018, work accident, his legs would “give out” without warning. The claimant explained that he would feel a sharp pain in his back, then his legs would give out, causing him to fall. According to the claimant, he has fallen on several occasions.

The claimant underwent an x-ray of his cervical spine on August 13, 2020. Dr. Blankenship explained the findings as follows:

He has significant segmental instability at C3-C4. He has a lateral disc protrusion at this level on the right-hand side. I do not have a good explanation to his upper extremity pain. I do think that his segmental instability in his neck at C3-C4 with the disc space settling he has at C4-C5 is likely causative in his current neck pain.

Although the claimant has suffered several falls, the November 27, 2020, fall seemed to cause the most injury. Following this fall, the claimant presented to the Washington Regional Medical Center Emergency Department with complaints as follows: “pt reports low back pain s/p fall today. [F]elt like he heard something pop ...”. The claimant was diagnosed with a compression fracture of the T12 vertebral body.

The claimant testified that this November 27, 2020, fall made his neck pain worse. The claimant also testified that prior to this fall, Dr. Blankenship had not recommended surgery for his cervical spine; however, Dr. Blankenship now recommends a “very urgent MRI” of the cervical spine and “possible surgical treatment”.

Dr. Blankenship provided an opinion letter dated October 28, 2021, regarding the claimant’s neck injury. In this letter, Dr. Blankenship opined the following:

... The gentleman is having a progression of myelopathy. As you know when he presented to me his lower back pain was so severe that I do think this superseded any complaints he had concerning his neck. As best I can tell from my records, the gentleman never has seen a physician in the past for his neck. Even if he had, with his gross increase in pain, it is still my opinion based on a reasonable degree of medical certainty that the reason the gentleman needs treatment for his neck is based on his work injury. His workers comp people have paid for an MRI for his cervical spine before so it appears at least sometime during his care they accepted responsibility for his neck.

The gentleman is having a progression of myelopathy and needs surgical treatment. Again, it is my opinion that the need for this surgical treatment is much greater than 50% if not wholly related to his work-related injury based on the information that I have. His cervical MRI is very old and he is getting progressively worse with weakness in his legs. The recommendation is a very urgent MRI of his

cervical spine and possible surgical treatment  
depending on what I see. ...

There is a clear causal connection between the claimant's compensable low back injury, which cause the claimant's falls, and his neck injury. Therefore, I find that the claimant has proven by a preponderance of the evidence that his cervical spine injury is a compensable consequence of his compensable low back injury.

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

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M. Scott Willhite, Commissioner