

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H000152

DON RINGGOLD, Employee	CLAIMANT
R W W , INC., Employer	RESPONDENT
HARTFORD UNDERWRITERS INSURANCE CO., Carrier	RESPONDENT

OPINION FILED APRIL 13, 2022

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MARK ALAN PEOPLES, Attorney, Little Rock, Arkansas.

Respondents represented by A. GENE WILLIAMS, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 14, 2022, the above captioned claim came on for hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on August 18, 2021 and a pre-hearing order was filed on August 19, 2021. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The employee/employer/carrier relationship existed among the parties on December 31, 2019.

3. The claimant sustained a compensable injury to his right foot and side on December 31, 2019.

4. The respondent paid medical as well as temporary total disability benefits through April 8, 2020.

5. The claimant was earning an average weekly wage of \$773.22 which would entitle him to compensation at the weekly rates of \$516.00 for total disability benefits and \$387.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injuries to claimant's head, neck, and back on December 31, 2019.

2. Temporary total disability benefits from April 9, 2020 through a date yet to be determined.

3. Related medical.

4. Attorney's fee.

The claimant contends that he suffered injuries to his foot, head, neck and back on or about December 31, 2019; that he was totally incapacitated from earning wages from the date of injury until a yet to be determined date in the future and is thus entitled to temporary total disability benefits from April 9, 2020 until the present and continuing; that he is entitled to medical treatment relative to his compensable head, neck, and back injuries; that the benefits set forth above have been controverted and thus, claimant is attorney is entitled to the maximum statutory attorney's fee. All other issues are reserved.

The respondents contend the claimant did not have a head injury. As to the alleged neck and back injuries, radiological studies showed degenerative conditions, and repeated neurological exams were normal.

From a review of the record as a whole, to include medical reports, 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, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on August 18, 2021 and contained in a pre-hearing order filed August 19, 2021 are hereby accepted as fact.

2. Claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his head, neck, or back on December 31, 2019.

### FACTUAL BACKGROUND

Claimant is a 59-year-old man who has performed carpentry work for most of his life. On December 31, 2019, he was working for respondent installing cabinets at a bank in Russellville. In the performance of his job claimant went back and forth from inside the bank to a trailer that was parked at the street. As he was walking back towards the bank his supervisor was talking to him and as claimant turned his head to respond, his foot hit the curb, causing him to fall. Claimant testified that he sat there for a period of time before standing up and continuing to work the remainder of the day. The parties have stipulated that as a result of the fall on December 31, 2019, claimant suffered a compensable injury to his right foot and side.

Claimant sought medical treatment at St. Vincent emergency room on January 3,

2020, complaining of pain in his right foot, lower back, and right shoulder. In addition, claimant has sought medical treatment from Unity Health in Cabot where he was referred to Dr. Vargas at Ortho Arkansas. Claimant has not undergone surgery, but has been treated conservatively with physical therapy, medication, and injections for his various complaints. This has included treatment from Dr. Kelli Schlesinger, neurologist; Dr. Brad Thomas; Dr. Lou Burba; and Dr. Christopher Wright.

Much of the treatment provided by these physicians has been for claimant's complaints of headaches, blackout spells, low back pain, and neck pain. Respondent has not accepted as compensable injuries to claimant's head, low back, or neck.

Claimant has filed this claim contending that he suffered compensable injuries to his head, low back, and neck on December 31, 2019. He requests payment of related medical benefits, temporary total disability benefits, and a controverted attorney fee.

### ADJUDICATION

Claimant contends that he suffered a compensable injury to his head, neck, and low back on December 31, 2019. Claimant's claim is for a specific injury, identifiable by time and place of occurrence. In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011

Ark. App. 450, 384 S.W. 3d 630.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered compensable injuries to his head, low back, or neck on December 31, 2019.

The first issue for consideration involves a compensable injury to claimant's head. Claimant has been primarily treated for his head complaints by Dr. Lou Burba who has diagnosed claimant with post-concussion syndrome with post-traumatic seizures and altered mental status. Claimant testified that when he fell on December 31, 2019 his back, head, and neck all hit the concrete. In addition on cross-examination claimant testified that he struck his head on December 31.

Q .... But today you remember falling back and hitting your head; is that what you told us?

A Yes.

However, at his deposition, claimant testified that he did not remember what happened on December 31.

Q Now, we are here about something that happened the last day of 2019, an incident or an accident. Do you remember that?

A I just remember falling, and after that, I can't remember anything after that.

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Q So do you know what time of day you got started there, and when you last worked - -

A I can't even remember what time we got there.

Q Do you remember what happened?

A I can't recall any of it.

Q All right. Do you know if you finished working that day?

A I think the others guys - - I think they tried to get it finished up, what we had left.

Q Did you drive home from there that day?

A I barely remember it. I mean, it's not real clear.

Q What do you remember about it?

A Not a whole lot. I mean, it kind of fades in and fades out. And, you know, I can't really - - it's not real clear to me.

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Q So that I am clear about this, whatever it was that happened back on December 31<sup>st</sup>, 2019, you just don't remember?

A I just don't remember. That's correct.

Thus, claimant's testimony at his deposition was that he did not recall what happened on December 31. Specifically, claimant did not mention having struck his head, neck, or back on the concrete on December 31.

Testifying at the hearing was Richard Rizzo who currently works for a power line equipment wholesaler, but in 2019 he worked for respondent. Rizzo testified that on December 31 he was standing at the back of a trailer smoking a cigarette at the time claimant fell. Rizzo testified that claimant did not fall backwards, but instead fell forwards onto his hands and that he did not hit his head. Rizzo further testified that claimant did not act like anything severe had occurred, but that claimant continued working the rest of the

day and that claimant seemed normal the rest of the day. After they finished working that day claimant drove Rizzo and another employee back to Vilonia which took about an hour.

Testifying by deposition was Michael Wood. Wood currently works for TBF Sanitation, but worked for respondent installing cabinets for six – eight months, including on December 31, 2019. Wood testified that he saw claimant fall and that he fell on his hands and did not hit his head.

Q Did you see it?

A Yes.

Q Where were you?

A I was at his truck.

Q Was that in front of the bank?

A It was in front of the bank on the road.

Q And where was Mr. Ringgold?

A Mr. Ringgold was - - I'm assuming you are talking about Ron. He was walking up the - - he was walking up the place where people park.

Q How far away were you from him?

A I was probably about 30 or 40 foot.

Q What did you see?

A What I seen was he was talking to somebody. He was walking up and he tripped over the curb.

Q Did he fall down?

A Yes.

Q How did he land?

A It looked to me like he landed on his hands.

Q Did you see him hit his head at all?

A No.

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Q You said, "It looked to me like he landed on his hands." Do you remember telling Mr. Williams that a few minutes ago?

A Yes, sir.

Q Okay. Are you able to say 100 percent that you are absolutely sure he didn't hit his head?

A I'm 100 percent sure of that, yes.

Q You're 100 percent sure he didn't hit his head?

A No, he didn't hit his head. He drove me back home.

Q Okay. I'm not asking you, sir, about whether he drove you back home.

A Okay. I'm sorry.

Q I'm asking you what - - sir, when you saw him fall, you can say 100 percent positively that he didn't hit his head?

A Yes, sir. He drove - -

Q You said it looked to be that he landed on his hands?

A - - me back home. How do you hit your head - - you hit your head and then you drive me back home. How are you going to do that?

Q Okay. You're saying he didn't hit his head - -



you know that he didn't hit his head, because he drove you back home?

A No. He did not hit his head. (Emphasis added.)

Wood further testified that after work that day claimant drove he and Rizzo back to Vilonia and that during the drive claimant did not make any complaints about headaches or any other problems.

Q Did he complain during that drive of having any headache or problems?

A He never said anything to me.

Q Did he seem normal to you as he drove that truck?

A Yes. He brought me back to my truck.

With respect to this issue, I also note that claimant denied hitting his head at the time of his initial medical treatment. Claimant sought medical treatment from St. Vincent emergency room on January 3, 2020. That report contains the following notation:

Denies hitting head, no thinners, no loc.

That report also indicates that claimant denied headaches and an examination of the head was noted to be atraumatic.

Claimant's next medical treatment was from Dr. Poulos at Unity Health in Cabot on January 13, 2020. Dr. Poulos' report indicates that his examination of the claimant's head was normal and there was no mention in the history of an injury to the head or any complaints involving the head.

With respect to claimant's credibility, I note that in addition to giving conflicting

testimony regarding his remembrance of the fall at the hearing and at his deposition that claimant also denied having driven since the time of the accident. At his deposition claimant testified that he does not drive and that he quit driving right after the accident because of blackout spells. Claimant's wife also testified at her deposition that claimant stopped driving immediately after the accident.

Q You told me when I took your deposition in January of 2021 that your husband had quit driving immediately after this incident; is that right?

A Yes, I did.

Testifying at the hearing was Russell Dziubanek, the owner of respondent. Dziubanek testified that on a day in September 2020 he was driving in Searcy and saw claimant driving his truck.

I was in my pickup truck and getting off the interstate and saw his pickup truck pulling his enclosed trailer and I just thought it was very ironic for all the times leading up to that to the phone calls that we've had and/or emails that we've had saying he can no longer drive or work or do anything and there he was driving, so I decided to take some pictures to share with you because he was driving his truck.

These photos and a short video from that observation were submitted into evidence by the respondent. After becoming aware of these photos and the video showing claimant driving, claimant and his wife explained this discrepancy by testifying that this was the only time claimant had driven since December 31.

#### Claimant

They asked my wife, one of her best friends, she was in an emergency situation and needed some help and asked me could I take my trailer where she could load it up and

haul it up to Searcy. I drove it up there and they unloaded it and I drove it back to the house.

Jane Ringgold

Q You just told us today that in the spring of 2020, he drove somewhere, to Searcy.

A I misunderstood the question at the time. I was not trying to disinform the court.

I do not find claimant's testimony regarding the accident to be credible. As noted, claimant testified at this deposition that he did not remember what happened on December 31. In addition, two co-employees who were present and witnessed the fall testified that claimant fell forward on his hands and did not hit his head. They further testified that after the fall claimant continued to work and at the end of the day claimant drove them back to Vilonia and made no complaints about injuries, headaches, or blackouts.

Notably, claimant has given a history of hitting his head to Dr. Burba and Dr. Wright. Claimant's initial evaluation with Dr. Burba occurred on August 18, 2020, and his report contains the following history:

He fell back and hit his head and lost consciousness.  
No one knows how long he was out.

Based on the credible evidence in this case, this history is incorrect. Likewise, Dr. Wright's report of October 19, 2020 states:

He was walking tripped over a curb and gutter, turned, hit the curb, fell onto the back of his head. He lost consciousness after the event. He does not know how long he was unconscious.

Again, based upon the testimony of the witnesses as well as claimant's own history given to the initial treating physician, this history to Dr. Wright is incorrect.

Finally, I note that claimant underwent an MRI of the brain and following that scan returned to Dr. Schlesinger on June 9, 2020. She noted that the MRI showed no signs of trauma and stated:

Mild white matter changes, consistent with patient's vascular risk factor of heavy smoking.

Claimant's medical records from various physicians indicate that he was a smoker. However, Dr. Burba in his report of August 18, 2020 indicates that claimant does not smoke.

Accordingly, after my review of the relevant evidence, I find that claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his head on December 31, 2019. Claimant testified at his deposition that he did not remember what happened on December 31. Two co-employees testified that claimant fell forward on his hands and did not hit his head at the time of the fall. In addition, at the time of his initial medical treatment claimant denied hitting his head or a loss of consciousness. Histories of claimant having fallen and striking the back of his head and losing consciousness as reflected in the reports of Dr. Burba and Dr. Wright are not supported by the credible evidence.

I also find that claimant has failed to prove by a preponderance of the evidence that he suffered compensable injuries to his low back and neck as a result of the fall on December 31. As previously noted, Rizzo testified that after the fall claimant continued

working and did not act like anything “severe” had happened. He also testified that claimant continued working the remainder of the day and seemed “pretty normal.” After work, claimant drove him to Vilonia which took approximately an hour and did not make any complaints about injuries during that drive. Likewise, Wood testified that claimant continued working the remainder of the day and that after work that day claimant drove him back to Vilonia and that he seemed normal during that drive. I also note that both Wood and Rizzo testified that claimant fell forward onto his hands, not backwards onto his back and neck as testified to by the claimant at the hearing.

Claimant has received various medical treatment for his complaints of neck and low back pain. This treatment has included physical therapy, medication, and injections. Claimant also underwent an MRI scan which revealed a small disc herniation at C5-6. However, according to Dr. Vargas, these findings did not explain claimant’s complaints:

The findings of the MRI that showed only small disc protrusion toward the left side did not explain the symptomatology in the right side or the periscapular pain.

Notably, claimant underwent an evaluation by Dr. Bruffett at the request of Dr. Ackerman, a pain management specialist. It was the opinion of Dr. Bruffett that claimant’s complaints were related to his head (a condition which I have found not to be compensable for the reasons stated above):

This is to see if he has a surgical problem in his spine. He has neck pain and low back pain. I think many of his complaints such as numbness in his arms and loss of dexterity may be more related to his head injury and seizures than anything else.

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He does not need any spinal surgery. ... I think most of his problems seem to be referable to his head injury.

I find that the opinion of Dr. Bruffett is credible and entitled to great weight. Based on his opinion as well as the remaining evidence, I find that claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his neck or low back as a result of the fall on December 31, 2019.

ORDER

Claimant has failed to prove by a preponderance of the evidence that he suffered compensable injuries to his head, neck, or low back on December 31, 2019. Therefore, his claim for compensation benefits is hereby denied and dismissed.

Respondents are liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$541.15.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE