

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO.: H108607**

**JASON A. BLAKE, EMPLOYEE**

**CLAIMANT**

**HOT SPRINGS VILLAGE PROPERTY HOMEOWNERS  
ASSOCIATION, EMPLOYER**

**RESPONDENT**

**CENTRAL ADJUSTMENT COMPANY, INC.,  
THIRD PARTY ADMINISTRATOR/TPA**

**RESPONDENT**

**OPINION FILED NOVEMBER 14, 2023**

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK in Hot Springs, Garland County, Arkansas.

The Claimant, pro se, appeared at the hearing.

Respondents represented by the Honorable Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

**Statement of the Case**

On August 25, 2023, the above-captioned claim came on for a hearing in Hot Springs, Arkansas. A pre-hearing telephone conference was conducted on July 12, 2023, from which a pre-hearing order was filed that same day. A copy of that order and the parties' responsive filings have been marked as Commission's Exhibit 1 and made a part of the record without objection.

**Stipulations**

During the pre-hearing telephone conference, and/or at the hearing, the parties agreed to the following stipulations:

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

2. That the employee-employer-insurance carrier relationship existed at all relevant times, including on or about October 12, 2021.
3. The Claimant's average weekly wage on October 12 was \$882.00, which entitles him to weekly compensation rates of \$588.00 and \$441.00.
4. At the beginning of the hearing, the parties agreed to stipulate that the Respondents are entitled to receive a credit/offset for any indemnity benefits awarded herein for the weeks during which the Claimant received unemployment benefits.
5. All issues not litigated here are reserved under the Arkansas Workers' Compensation Act.

### Issues

By agreement of the parties, the issues litigated at the hearing were as follows:

1. Whether the Claimant sustained a compensable low back injury on October 12.
2. Whether the Claimant is entitled to reasonable and necessary medical treatment, to include additional steroid injections.
3. Whether the Claimant is entitled to temporary total disability benefits from October 13, 2021 through to a date yet to be decided.
4. Whether the Respondents wrongfully terminated the Claimant.

### Contentions

The respective contentions of the parties are as follows:

#### Claimant:

The Claimant contends that he sustained a compensable low back injury while working for

the respondent-employer on October 12, 2021. He also contends that he is entitled to reasonable and necessary medical treatment for his alleged low back injury, and temporary total disability compensation from October 14, 2021, to a date yet to be decided. The Claimant has also alleged that the respondent-employer wrongfully terminated his employment.

Respondents:

Respondents contend that Claimant did not suffer a compensable low back injury on October 21, 2021. He has no new objective medical findings of a low back injury. The Claimant had a pre-existing cervical fusion and no new findings of a cervical injury. Dr. Wayne Bruffett stated, “There is no evidence of objective injury related to the work injury of October 12, 2021.”

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based on my review of the record as a whole, to include the aforementioned documentary evidence, other matters properly before the Commission, and after having had an opportunity to hear the testimony of the witnesses and 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 authority over this claim.
2. I hereby accept the above-mentioned proposed stipulations as fact.
3. The Claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his back on October 12, 2021. Specifically, there are no objective medical findings of record establishing an injury to the Claimant’s back.
4. The remaining issues of temporary total disability compensation and additional medical benefits have been rendered moot by the above findings. Accordingly, these issues have not been addressed in this Opinion.

5. The Claimant failed to offer any evidence to support a finding that the respondent-employer terminated his employment due to any cognizable remedy that falls under the Arkansas Workers' Compensation Act.

### Summary of Evidence

At the hearing, the Claimant and his former supervisor, Mr. Wesley Carpenter, were the only two witnesses.

The record consists of the August 25, 2023 hearing transcript, comprising of the following exhibits, in addition to Commission's Exhibit 1: Claimant's Exhibit 1 included a Medical Exhibit; Claimant's Exhibit 2 is a Non-Medical Exhibit consisting of one page; and Respondents' Exhibit 1 includes a cover sheet and Respondents' Medical Exhibit consisting of seven (7) numbered pages. Additionally, the Claimant's deposition taken on May 25, 2022, was made a part of the record by the Respondents. It has been marked as Respondents' Exhibit 2.

### Testimony

#### Jason Blake

The Claimant has a high school diploma. According to the Claimant, approximately ten years later he attended vocational school and became a master electrician. On April 4, 2018, the Claimant began working for the respondent-employer, Hot Springs Village Property Owners Association. The Claimant has alleged that he sustained an injury to his low back on October 12, 2021. At that time, the Claimant worked as an electrician for the respondent-employer.

He described his job duties as follows: "I serviced grinders and sewer tanks, which have a sewage pump in them. Every house in the Village just about has one, and maintenance on the panels on the sides of the houses... Plus we did construction and everything else. We were a do-it-all team."

The Claimant testified that he injured his back on October 12, 2021. Per the Claimant, there was one witness to his accidental fall, a coworker, Seth Davis. He refused to say why Mr. Davis did not appear for his hearing. The Claimant replied, “I don’t want to talk about it. I don’t want to get nobody in trouble.” According to the Claimant, on the afternoon of October 12, he was “called out” to a house after hours for repair work to a sewer tank. He was wearing cowboy boots, and they were slippery. As the Claimant walked around the house to the sewer tank, he could see it was full and had water coming out of it. The Claimant slipped and fell and landed on top of the sewer tank. According to the Claimant, he sat there for five or six minutes, and then he got up and finished the job.

Shortly thereafter, the Claimant reported his injury to Jason Temple, and Wesley Carpenter, who was his supervisor. The Claimant was taken to a local clinic, at CHI in Hot Springs. According to the Claimant, they took a statement and gave him a drug test. The Claimant testified that he was in a lot of pain, so they gave him a pain shot. The Claimant described his pain as being a “real stabbing, sharp pain in the middle of his back,” which caused him not to be able to bend over or do anything at that time. The Claimant went on to explain he was able to finish the job because the only thing Seth Davis had to do was open the door and flip the switch to the power for the sewer tank to work.

The next day, on October 13, the Claimant went to the doctor. The Claimant testified that they scheduled him for a lumbar MRI, and after that he saw Dr. Wayne Bruffett. According to the Claimant, Dr. Bruffett compared the MRI against the x-rays he took at his office. The Claimant specifically testified that he disliked the care he received from Dr. Bruffett. As a result, he contacted the insurance carrier to request another doctor. They referred him to Dr. Reza Shahim at the Arkansas Surgical Medical Center. The Claimant testified that he underwent a “three-facet

injection” on his back while under the care of Dr. Shahim. Per the Claimant, they went from treating his back to treating his neck. He testified he was given verbal orders directing him off work. The Claimant could not remember if any doctor took him off due to his alleged back injury. He confirmed he has not returned to work since October 2021, except for the light-duty work he performed for the respondent-employer.

Next, the Claimant testified that he worked on light duty after being placed on these restrictions by Dr. Mark Larey and Dr. Reza Shahim. The Respondents’ attorney confirmed that the Claimant got a change of physician before the Respondents controverted the claim.

According to the Claimant, during his last visit with Dr. Shahim, he was accompanied by a representative with the insurance carrier. Specifically, the Claimant testified:

Q What did he do at that last visit?

A The work workman’s comp people, I think, her name was Kathy, she was there, and he said does your back feel better, and I was like, yes, sir. He goes well, then you don’t need surgery, yet, but your neck..... And then he started explaining about my neck.

The Claimant verified that he received some payments for temporary total disability from the day of injury until November 17. Although the Claimant has not received any more treatment from Dr. Shahim, he has received treatment from Dr. John Pace. According to the Claimant, Dr. Pace has performed steroid shots on his back about six or seven times. The Claimant testified that Dr. Pace has also prescribed medications for his back.

He confirmed that the Respondents last paid for his medical treatment when he saw Dr. Shahim for a one-time change of physician. The Claimant verified that he is asking for the medical treatment of record, which he received after his visit with Dr. Shahim. He is also seeking additional treatment from Dr. Pace, in the form of steroid injections for his back.

Regarding medical treatment and injuries to his back prior to October 2021, the Claimant admitted that he had “some messed-up vertebrae.” He testified that he told every doctor he had some pre-existing conditions. The Claimant maintained that he fell “many times” at work and various other places. Per the Claimant, Dr. Bill James performed an injection in his lower back. The Claimant confirmed that he received unemployment benefits. According to the Claimant, he stopped these benefits because he was going to have neck surgery.

The Claimant testified that his symptoms from the October 12, 2021, work incident include numbness in his pinkie toe and ankles, and hips hurt. According to the Claimant, his knees are now starting to hurt. He walks with a cane that his given to him by his father. The Claimant confirmed that prior to his October 2021 incident, he had back pain for which he was under pain management. However, Claimant’s pain doctor moved to Georgia, and he has not seen anyone other than Dr. Pace for his back condition. He admitted that he received one treatment in the form of an injection from Dr. Pace prior to October 2021. The Claimant confirmed that prior to his work incident, he was prescribed pain pills for his back while under the care of Dr. Matt Huskey.

However, the Claimant maintained that all his prior back problems were at L6-L7; yet he stated that now his problems are at L4-L5. The Claimant admitted that he previously underwent an MRI of his back. He also admitted that he was in a car wreck four years prior to his work incident, for which he received a settlement of \$4,000.00 to replace his vehicle. The Claimant denied that he sustained any physical injuries during that accident. According to the Claimant, he got rear-ended in Hot Springs Village as a result of a minor car accident. He was driving a 1996 Mercury Mountaineer. The Claimant also had another previous accident involving a four-wheeler in 2007 during Memorial Day weekend. He further explained that he was riding as a passenger

when they hit a tree. He confirmed that he sustained a laceration down his right leg. The Claimant denied being thrown from the ATV.

The Claimant maintained he was wrongfully terminated because after he went back to work. At that time, he was told that they did not have any full-time light duty work available. According to the Claimant, management told him he needed to get the paperwork changed by Dr. Shahim so he could get on FMLA, but he refused to sign it. The Claimant denied that he could perform his regular duties as an electrician because he is not able to climb a ladder or carry anything over twenty pounds.

On cross-examination, the Claimant admitted he had several pre-existing medical conditions before October 12, 2021. He confirmed that he has undergone a cervical fusion. The Claimant had his first neck fusion in 2007. He maintained he does not know what caused him to have a cervical fusion. At the time of his surgery, the Claimant had group health insurance and used it to pay for his surgery.

The Claimant also admitted that he had low back problems before October 2021 that were severe enough to cause him to undergo an MRI. He verified that during his deposition, he testified that he had a “bad disc” in his back. However, the Claimant denied that anyone suggested he undergo back surgery at that time. Instead, the Claimant testified that he has been on Hydrocodone for years. The Claimant’s pain management care before October 12 was under Dr. Petrov, but he moved to Georgia. He admitted that after Dr. Petrov left town, he tried to continue to treat at the Pain Clinic Centers of America, but they discharged him from medical care because he failed a drug test.

He admitted that he had an MRI of his neck six days prior to October 12, 2021, because his neck was swollen. The Claimant maintained that he pinched his neck at a job site, but he did



not report it. According to the Claimant, the MRI showed that some of the ligaments connecting to his shoulder had detached. He confirmed that the fusion surgery for his neck fixed everything.

The Claimant confirmed that after the October 12, 2021, incident, he had an MRI about nine days later. He agreed that the MRI showed that at L4-L5, there was moderate canal stenosis and disc desiccation, along with multi-level degenerative facet arthropathy. In that regard, the Claimant attempted to explain:

A Where is the disc that you had back in 2019?

Q I don't know.

A It's not on here. Why didn't it show up on this MRI?

Q I don't know.

He admitted that Dr. Bruffett released him from care of his low back injury on November 17, 2021. The Claimant confirmed that initially Dr. Shahim treated his back, but then he started treating his neck instead. He admitted that Dr. Huskey referred him to Dr. Pace, who is a neurosurgeon. The Claimant testified that he underwent neck surgery by Dr. Pace on November 4, 2022. He gave conflicting and confusing testimony about having been released from his neck surgery. (T 42) However, the Claimant admitted that his neck surgery entailed additional fusion at another level and was not a re-do of the earlier fusion. The Claimant admitted that his neck surgery keeps him from doing his career work.

Under further questioning, the Claimant testified that he returned to work for the respondent-employer on light duty and worked until May 23 or 28, 2022. He admitted that he told the workers at the unemployment office, "he was ready, willing, and able to work" when he signed up for benefits. The Claimant confirmed that during his deposition, which was taken on May 25, 2022, he testified he was looking for work at an electrical supply store.

According to the Claimant, he was told to wait until after his neck outcome before he did anything with his back condition. He maintained that surgery has now been recommended for his back. However, the Claimant admitted that he testified during his deposition that surgery had not been recommended for his back; but now he does need back surgery because a new MRI shows that his condition has gotten worse since the October 22, 2021, MRI.

On redirect examination, The Claimant confirmed that he had another MRI in January of 2023 and Dr. Pace has recommended surgery on his back, but he is afraid to have it done. Instead, the Claimant testified that he wants to have “electroshock nerve therapy” for his back condition.

Wesley Carpenter

Mr. Carpenter testified that he was the Claimant’s immediate supervisor on October 12, 2021. However, he confirmed that he has retired from the company as of a year ago in June. Mr. Carpenter verified that the Claimant reported his October 2021 injury to him.

Specifically, Mr. Carpenter provided the following explanation of the Claimant’s work-related fall:

A Him and another guy was going down there..... James Wallace was going on a sewer tank call at a residence for the Village, and it was a steep incline, and it had been raining, and as they were going down, he slipped and he fell and he landed on the lid of the tank, and when they finished with their call, he came back and reported it to me, and we filled out the paperwork on it then.

Mr. Carpenter confirmed the Claimant’s testimony that he took the Claimant to the after-hours clinic. He verified that the Claimant was in pain. Mr. Carpenter confirmed that the Claimant came to work after his injury and worked light duty. However, he testified that the Claimant was in pain.

### **Adjudication**

The primary issue in the case at bar involves an alleged injury to the Claimant's back. Specifically, the Claimant contends that he sustained a compensable injury to his lower back on the evening of October 12, 2021, when he slipped and fell while working for the respondent-employer.

In order to prove the occurrence of an injury caused by a specific incident or incidents identifiable by time and place of occurrence, the Claimant must show by a preponderance of the evidence that: (1) an injury occurred that arose out of and in the course of his employment; (2) the injury caused internal or external harm to the body that required medical services or resulted in disability or death; (3) the injury is established by medical evidence supported by objective findings, which are those findings which cannot come under the voluntary control of the patient; and (4) 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 burden of proof shall be a preponderance of the evidence. Ark. Code Ann. §11-9-102 (4) (E) (i). This standard 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), citing *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947). If the Claimant does not prove by a preponderance of the evidence any of the above requirements for proving compensability, compensation must be denied.

The Respondents initially accepted this claim and paid medical and indemnity benefits through November 15, 2021, the day of the Claimant's independent medical evaluation by Bruffett. However, they have now controverted the claim in its entirety.

Here, it is undisputed that the Claimant incurred a work-related fall on the evening of October 12, 2021, when he accidentally slipped and fell in the driveway area of a homeowner while working for the respondent-employer. The Claimant promptly reported the incident to his supervisor, Mr. Carpenter. They completed the proper paperwork for the incident and Mr. Carpenter transported the Claimant to a nearby walk-in clinic due to complaints of back and neck pain. Although this report was not made a part of the record, the Claimant testified that he was given a shot for pain and discharged home.

Yet, the first medical report of record following the Claimant's October 12, 2021, work-related fall is an MRI of his lumbar spine, which was performed on October 22. Dr. Devon Holder's impression was: "At L-4-5, there is moderate canal stenosis. Disc desiccation noted at L4-5 and L5-S1. Multilevel degenerative facet arthropathy."

The next medical report of record after the Claimant's alleged low back injury was authored by Dr. Wayne Bruffett on November 15, 2021. At that point, the Claimant underwent an independent medical evaluation by Dr. Bruffett. Specifically, the Claimant presented to discuss concerns about his low back pain, mid back pain, and neck pain that began on October 12, 2021. The Claimant reported to Dr. Bruffett a medical history of prior chronic neck and low back pain. However, the Claimant's neck condition is not a part of this claim.

Nevertheless, Dr. Bruffett stated that x-rays of the Claimant's lumbar spine showed evidence of "multilevel disc degeneration." The Claimant reported to Dr. Bruffett that as part of his work-up for his work injury, he underwent an MRI of his back on October 22. Dr. Bruffett reviewed the MRI of his lumbar spine.

In this regard, Dr. Bruffett opined that the October lumbar MRI also showed "multilevel disc degeneration disc bulging, but no significant disc herniation." Dr. Bruffett explicitly opined

that the MRI of the Claimant's lumbar spine showed no evidence of an objective injury related to his work-related injury of October 12, 2021. Dr. Bruffett opined that 100% of the pathology that is noted there would be considered pre-existing. There are no expert opinions or probative evidence to the contrary; and this expert opinion is consistent with Dr. Holder's review of the lumbar MRI, wherein he cited an impression of only degenerative changes. Per these medical notes, Dr. Bruffett told the Claimant that any further medical treatment for his back would be for his pre-existing condition and unrelated to his work injury. Hence, Dr. Bruffett pronounced the Claimant to be at maximum medical improvement for his work-related injury and released him from care for his back condition. Dr. Bruffett's clinical notes do not reflect or cite any other objective medical findings establishing an injury to the Claimant's back, such as a spasm, contusion, abrasions, or swelling.

During the hearing, the Claimant credibly testified to having had prior chronic problems with his back. He also reported a prior history of pre-existing back-related issues to Dr. Bruffett. The Claimant readily admitted that at the time of his work-related fall, he was taking Hydrocodone for back pain. The Claimant also testified that he had been previously told by medical providers that he had a "bad disc," in his back, but he maintained that it was at a different level. However, I did not find the Claimant's testimony to be credible in this regard because his testimony is not corroborated by the medical evidence of record, namely the MRI. Moreover, although the Claimant has offered testimony of complaints of back pain, it is well-established in workers' compensation law that complaints of pain are not recognized as an objective medical finding.

Quite notably, the Claimant did not present any medical records from his initial clinic visit or any contemporaneous medical records establishing an objective medical finding of a compensable back injury to his low back. Thus, I recognize that it is well-established in Arkansas

workers' compensation law that pre-existing conditions may be compensable if they are aggravated by a work-related injury. However, I do not find such circumstances to exist in this case.

Therefore, based on all the foregoing, I have attached significant weight to Dr. Bruffett's expert opinion. Specifically, I am unable to find any objective medical evidence establishing an injury to the Claimant's back because of his work-related fall of October 12, 2021. Absent an objective medical finding establishing an injury, the Claimant cannot meet his burden of proving by a preponderance of the evidence that he suffered a compensable back injury on October 12. Because there is not an objective medical finding proving a compensable injury to the Claimant's lumbar spine, his claim for a work-related injury to his back must be denied.

It is noteworthy to point out that the other medical records submitted are too remote in time to be causally connected to the Claimant's work-related fall of October 12, 2021.

Consequently, the remaining issues of temporary total disability and reasonable and necessary medical treatment have been rendered moot and not discussed in this opinion.

Additionally, the Claimant has alleged that the Respondents wrongfully discharged him. However, the Claimant failed to provide any proof that the respondent-employer wrongfully terminated his employment due to any cognizable remedy under the Arkansas Workers' Compensation Act.

### **ORDER**

The Claimant did not prove by a preponderance of credible evidence that he sustained a compensable back injury on October 12, 2021, in the course of his employment with the respondent-employer. Therefore, this claim for a back injury is hereby respectfully denied and dismissed in its entirety. The remaining issues of temporary total disability compensation and

additional reasonable and necessary medical treatment have been rendered moot and not discussed herein. There is insufficient evidence to support a finding that the respondent-employer wrongfully terminated the Claimant's employment due to any cognizable remedy under the Act.

**IT IS SO ORDERED.**

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**CHANDRA L. BLACK**  
**Administrative Law Judge**