

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G306291

KIMBERLY BITTERMAN, EMPLOYEE CLAIMANT

BAXTER COUNTY REGIONAL HOSPITAL,
EMPLOYER RESPONDENT NO. 1

RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER/TPA RESPONDENT NO. 1

DEATH AND PERMANENT TOTAL DISABILITY
TRUST FUND RESPONDENT NO. 2

OPINION FILED MAY 27, 2021

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

Claimant represented by the HONORABLE FREDERICK S. "RICK"
SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondents No. 1 represented by the HONORABLE MELISSA WOOD,
Attorney at Law, Little Rock, Arkansas.

Respondents 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

Respondents appeal an opinion and order of the Administrative Law
Judge filed December 17, 2020. In said order, the Administrative Law
Judge made the following findings of fact and conclusions of law:

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 proven by a preponderance of the evidence that she is entitled to additional treatment in the form of a below-the-knee amputation of her right lower extremity.

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 17, 2020 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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. §11-9-809 (Repl. 2012).

For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Palmer dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that the Claimant proved by a preponderance of the evidence that she is entitled to additional medical treatment in the form of a below-the-knee amputation.

Arkansas law requires employers to promptly provide medical services that are reasonably necessary and causally connected to an employee's compensable injury. Ark. Code Ann. § 11-9-508(a). It is the employee's burden to prove, by a preponderance of the evidence, that she or he has suffered a compensable injury. *Williams v. Baldor Elec. Co.*, 2014 Ark. App. 62. An injury is compensable if it (1) is caused by a specific

incident and is identifiable by time and place of occurrence; (2) causes harm to the body; (3) arises out of and during the course of employment; and (4) requires medical services or results in disability or death.

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code. Ann. § 11-9-102(4)(D).

“Objective findings” are those findings which cannot come under the voluntary control of the patient. Ark. Code. Ann. § 11-9-102(16).

In workers' compensation law, an employer takes employees as it finds them, and employment circumstances that aggravate pre-existing conditions are compensable. An aggravation of a pre-existing, non-compensable condition by a compensable injury is, itself, compensable. An aggravation is a new injury resulting from an independent incident. An aggravation, being a new injury with an independent cause, must meet the definition of a compensable injury to establish compensability for the aggravation. *Evans v. Firestone Bldg. Prods.*, 2020 Ark. App. 80, at 1, 594 S.W.3d 139, 141.

The Commission has the duty to make credibility determinations, to weigh the evidence, and to resolve conflicts in the medical testimony.

Martin Charcoal, Inc. v. Britt, 102 Ark. App. 252, 284 S.W.3d 91 (2008).

There is nothing in the record to suggest that Claimant's requested additional medical treatment (a below-knee amputation) is related to the

workplace injury in 2013. According to Dr. Roman and Dr. Thomas, Claimant's current condition is related to her pre-existing conditions and not the workplace injury. As such, the below-knee amputation is not necessary and reasonable medical treatment for Claimant's compensable injury.

Moreover, the elective below-knee amputation was Claimant's idea. The doctor who agreed to perform the below-knee amputation is of the opinion that Claimant would likely suffer from phantom pain for at least a year and perhaps indefinitely. In other words, it will not likely provide the relief Claimant is seeking. Accordingly, for the reasons set forth above, I must dissent from the majority opinion.

CHRISTOPHER L. PALMER, Commissioner