

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H207527**

MICHAEL KEVIN JENKINS, EMPLOYEE

CLAIMANT

VS.

FENCE WORLD INC., EMPLOYER

RESPONDENT

**BRIDGEFIELD CASUALTY INSURANCE COMPANY/
CARRIER/SUMMIT CONSUSTING, LLC, TPA**

RESPONDENT

OPINION FILED JULY 11, 2023

Hearing before Administrative Law Judge, James D. Kennedy, on the 16th day of May, 2023, in Little Rock, Pulaski County, Arkansas.

Claimant is represented by Mr. B. Tanner Thomas, Attorney-at-Law, Little Rock, Arkansas.

Respondents are represented by Mr. Jason M. Ryburn, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 16th day of May, 2023, where the claimant contended he was injured in a motor vehicle accident that occurred during his employment and that his injuries were compensable; that he was entitled to medical benefits, temporary total benefits, and attorney fees as a result of the accident. The respondents contended that the claimant's current conditions and his need for treatment were not related to the May 11, 2022, motor vehicle accident; that the claimant suffered from pre-existing and unrelated conditions; that the claimant returned to work after the accident and that, consequently, no TTD was owed. A copy of the Prehearing Order was marked "Commission Exhibit 1" and made part of the record without objection. The Order provided that the parties stipulated that the Arkansas Workers' Compensation

Commission had jurisdiction of the within claim and that an employer/employee relationship existed on May 11, 2022, the date of the claimed injury in question. At the time of the hearing, the parties were able to stipulate that the claimant was earning an average weekly wage of \$676.00 and that consequently, the TTD/PPD rates for the claimant were \$451.00 / \$338.00, respectively.

The claimant's and respondent's responses were set out in their respective responses to the prehearing questionnaire and made a part of the record without objection. The sole witness was Michael Kevin Jenkins, the claimant. From a review of the record as a whole, to include medical reports and other matters properly before the Commission, and having had an opportunity to observe the testimony and demeanor of the witness, the following findings of fact and conclusions of law are made in accordance with Arkansas Code Annotated §11-9-704.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That an employer/employee relationship existed on May 11, 2022, the date of the claimed injuries. At the time of the claimed injury, the claimant earned an average weekly wage of \$676.00, sufficient for TTD/PPD rates of \$451.00 / \$338.00 respectively.
3. The respondents are estopped from denying the responsibility of the visit to the UAMS ER on May 11, 2022, notwithstanding the fact that the injury was not found to be compensable, and that the respondents are consequently responsible for said visit. However, the respondents are not found to be responsible for the return visit to the UAMS ER on May 14, 2022.
4. That the claimant has failed to satisfy the required burden of proof that his claim of an injury which constituted a strain to his right lower leg and any remaining claim of an injury to the right lower leg and knee is compensable.
5. That the claimant has failed to satisfy the required burden of proof to show that the remaining claims for injuries to various body parts are compensable.

6. That the question for the medical treatment for the claimed injuries are found to be moot, with the exception of the initial visit to the UAMS ER on May 11, 2022.
7. That the claimant has failed to satisfy the required burden of proof to show he is entitled to TTD.
8. The question of attorney fees allowed pursuant to Arkansas Code Annotated §11-9-715, is found to be moot.
9. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The Prehearing Order, along with the prehearing questionnaires of the parties were admitted into the record without objection. The claimant submitted one exhibit that was admitted into evidence without objection and primarily contained medical records, along with a copy of the accident report. The respondents exhibit one was admitted over the objection of the claimant and was an Opinion previously entered in regard to a previous workers' compensation claim by the claimant in regard to the claimant's right wrist. The respondents also submitted a copy of the deposition of the claimant that was admitted without objection.

The claimant was the sole witness and testified that he attended high school but never graduated and never obtained a GED, but attended a "special class." He had spent most of his working life, painting, landscaping, working for a machine shop, working for Howard Garner Fencing, and had also learned to weld. Regarding the accident on May 11, 2022, the claimant testified that there was a job in the England/Scott area where they were going to build a fence and while driving there, a women pulled out of the driveway of the New Life Church, and the claimant slammed into her. He did not immediately go to the hospital but sat there waiting for the fire department to get him out of the truck he

was driving. An ambulance came and picked up the women in the other vehicle and took her to the hospital. The claimant talked to Brachman, a guy in the office at work, who told him to hang on, and who printed off the insurance papers and brought them to the accident scene. The fire department finally opened the door of the claimant's vehicle and he was helped towards the vehicle of Luke Brachman, the gentleman who brought the insurance papers to the accident scene. The claimant was later taken to the emergency room at UAMS and dropped off by someone. (Tr. 5-10)

The claimant testified that the UAMS ER treated his leg, took X-rays, and also an MRI. The claimant's main complaints were the swelling in the calf of his leg, his lower back, hip, and his neck and he thought he was given a muscle relaxer. He was later treated at Pinnacle Spine Clinic and Flex Worx. He also remembered going back to UAMS for a second time, again with complaints regarding his back, legs, and neck. He also remembered being treated at Flex Worx on May 25th by Sandy Cleveland, and his main complaints were hip, neck, and back, with continued physical therapy, and who eventually recommended an MRI. (Tr. 11-13)

He was eventually referred to Dr. Glenn Crosby for a single visit and then referred to Pinnacle Spine by his "injury lawyer" for his third-party claim where he was seen by Doctor Hood. (Tr. 14) He stated that he also saw Dr. Brian Reece, who reviewed the second MRI of his back, hip, neck and knee. The claimant stated he saw the MRI and he had a torn disc in his back, and they made an incision in his neck and back. Afterwards, he still had problems with his right hip, knee, and back. He felt the need for surgery was based on the MRI. He was still hurting in his hip and below his knee but was feeling a little better in his neck and back. (Tr. 15-17)

The claimant was off work for the first week or two. He was then placed on light-duty and limited to a lift of ten (10) to fifteen (15) pounds. He was unable to work and thought he was off work for thirty (30) days. The following questioning then occurred:
(Tr. 18)

Q: Did you have any pain in your neck like the pain that you experienced after this accident? Did you have anything before this accident?

A: Yes. I had pain and I had headaches.

Q: So are you saying that as a result of the accident or prior to the accident, or before the accident?

A: Prior to the accident.

Q: And “prior” means “before”. Before the accident did you have these x-rays?

A: No, I never had nothing. (Tr. 19)

Under cross-examination, the claimant initially admitted that he had a few workers’ compensation claims in the past, about four (4). He was then asked if the records provided he had eight (8) claims and with that question, he responded that, “If it’s small things, or it’s like going to the doctors, probably got cut or something fell on my foot yeah, probably so.” He admitted he had a previous right shoulder injury that was settled a few years ago, about 2020, a rotator cuff tear, that was the result of a motor vehicle accident in the company truck. The claimant admitted that surgery was recommended but he never received it, “cause I didn’t have the money and the insurance. I didn’t know who was going to pay for it.” In response to the settlement of the claim, the claimant stated, “I think it was, if I ain’t mistaken like 24 or 22, something like that.” The claimant also admitted he had settled his third-party claim that was involved in the previous motor vehicle accident and that in his previous claim, he was sore in his right shoulder and right

leg but denied neck or back pain. The claimant also admitted having a previous hearing back in 2013 with the Commission, which involved his right hand and wrist and was asked how it turned out. He responded, “Well, they said their outcome is -- I don’t know how the outcome came out on that.” (Tr. 20-23)

The claimant was also questioned about the motor vehicle accident on May 11, 2022. He stated that at the time of the accident he was going forty (40) or forty-five (45), when the women pulled out in front of him. He was later taken to UAMS by his employer and complained that his knee was swollen and he pointed to his right calf while testifying, but admitted that he didn’t complain about his right shoulder. The claimant was then questioned why the diagnosis on page one of his exhibit stated, “Right shoulder strain.” The claimant admitted that he was pointing behind his shoulder, kind of onto his back. The claimant disagreed with the report providing for a right shoulder strain. The claimant was also questioned about going to the ER in 2020 in regard to right shoulder pain and responded that he could not remember what happened in regard to the visit in 2020. The claimant was specifically asked about the report referring to right shoulder strain and a strain of his calf muscle and the claimant responded, “what do you mean, down there” and asked, “That’s when I went to the hospital.” He stated, “Well, that would be my right lower leg right here (indicating). It’s not toward my knee, it’s right below my knee....” and then admitted he was talking about the back of his leg. The claimant was also cross-examined about the report providing for, “No back pain.” He responded, “I did have back pain. I was hurting,” and went on to state that he did tell the ER doctors about his back pain. The claimant stated the reason the back pain was not mentioned in the report was, “Because they didn’t treat me the way they was supposed to.” (Tr. 26-29) “At the

time they didn't do any extra checking on me because it was at the ER." The claimant stated that his lower neck below his head, his lower back, and his hip were part of this claim and that his claim for his right leg was related to either his back or hip injury. (Tr. 30-31)

The claimant further testified his "injury lawyer" sent him somewhere else to be checked out besides UAMS. He agreed his right arm from his shoulder to his hand was not part of the claim. The claimant then referred to his upper back, low back, hip, and the calf of his leg. He also stated he thought that he had blacked out for a minute at the time of the accident but admitted that his brain was not part of the claim. The claimant went on to state, "I mean I didn't have loss of memories, like I was confused and I was – what do you call it? – traumatized from the wreck." (Tr. 32-34) Upon further questioning, he stated he was talking about the area between his shoulder and his neck, but again denied that the report was correct where it provided he denied neck pain. (Tr. 35) Under further questioning, the claimant stated that he returned to the ER on the 14th, because his back pain was "worsen" and he again thought the report was not accurate. (Tr. 37)

The claimant thought he was off work like two (2) weeks or more, but stated that his records for being off work were at home and he did not bring them. (Tr. 38-39) He was also questioned about additional body parts being involved and named after his second ER visit and after obtaining the services of the attorney in regard to the third-party claim. He responded that at the ER, "they don't have time to sit there and check you fully out." "At that time there was no insurance, no show insurance - -" (Tr. 41) The claimant also believed that his Flex Worx bill was paid by his injury lawyer, but then stated that he thought it was paid by the woman who was driving the other car's insurance. (Tr. 42)

The claimant felt he had missed all of his days of work between the accident on May 11 and May 25, the date he went to the Flex Worx provider. He was also questioned about the Flex Worx report of May 25, 2022, which provided he reported missing four (4) days off work. The claimant stated he didn't go to Flex Worx until, "way after that." (Tr.44) He admitted going in to work light-duty and being paid. (Tr.45) He would just sweep the floor, pick up stuff, and drive people around. (Tr.46)

The claimant went on to state that he felt that Flex Worx checked him out better than the ER. His right shoulder was not hurt, "it's just my lower, my high up. I don't know what they call it right down there." (Tr.47) The claimant also agreed with their assessment of an acute right lower extremity strain and contusion, acute right hip strain and contusion, acute right lower extremity numbness and tingling, acute right shoulder sprain with exacerbation of a pre-existing injury. In regard to his right shoulder, the claimant stated that, "Right shoulder does not hurt, it's just my lower, my high up. I don't know what they call it down there." He also agreed that he continued working with restrictions. (Tr.48) He was also questioned about returning on June 14th, and the report provided that his headache had resolved and he responded that his headache had not resolved at that time. He agreed his pain was mostly in his hip at that time. He also disagreed with the report providing there was no radicular pain from the cervical spine. (Tr.49-50)

In regard to Dr. Crosby, the claimant admitted Dr. Crosby reviewed the MRI of his lumbar spine. (Tr.52) However, the claimant also disagreed with the findings of arthropathy of the right hip by Dr. Crosby. (Tr.53) He stated that his lawyer told him that, "These people are no good. They're not checking me thoroughly." He went on to say that he did not like the way he was treated by Dr. Crosby, and he was sent there by his

lawyer. (Tr.54) At this point it was noted the claimant saw Dr. Reece at Pinnacle Spine. The claimant was then asked about July 27th, when he had stated that his pain had resolved in regard to his neck, right and left forearm, right shoulder, and right lower leg and his response was he did not remember. (Tr.55) He admitted that he had not reviewed his medical records. (Tr.56) He did think that Dr. Hood was the hip guy. He also admitted seeing Ms. Kay Lynn Brunt, a physician's assistant, and that he was sent there by his attorney. He also admitted that his attorney for the car wreck had sent him everywhere with the exception of UAMS. (Tr.57) In regard to the claimant mentioning knee pain for the first time when he saw Ms. Brunt, his response was, "Cause I didn't know what was hurting was my knee right here or most of my pain was burnt from my back almost down to my knee." (Tr.59)

He admitted that he was still working for Fence World, the accident happened about a year ago, and he had worked there since then, although he was unable to perform his normal job. (Tr.65-66) The claimant also stated that he was sixty (60) years old at the time of the hearing. (Tr.68)

On re-direct, the claimant stated he hit the woman's Bronco on the back left quarter panel on the driver's side. He eventually went to the ER on May 11, and returned on May 14, with complaints of back pain. After that, he treated with Flex Worx beginning on May 25th, where he complained of neck pain. He also had an MRI with Millenium MRI that showed cervical spine disc bulges. The claimant also admitted that he got flustered when under pressure and would not dispute any MRI that showed injuries. (Tr.68-70)) The claimant also agreed he had stated in his deposition at line 4, page 18, that he had missed work for a week or more. He also agreed there were other days missed. (Tr.71) It was

also the claimant's understanding that his workers' compensation claim was denied. (Tr.72) The claimant was waiting for the third-party claim to resolve and had no health insurance. (Tr.73)

On re-cross, the claimant admitted that he had no documentation regarding the days that he was off. (Tr.75) On re-direct, the claimant stated he thought that he had been off of work for a month. (Tr.76)

The claimant submitted a packet of medical reports consisting of one hundred sixty-four (164) pages, that was admitted into the record without objection. The records provided that the claimant was initially taken to the UAMS ER on the day of the motor vehicle accident. The report provided for a history of acute bursitis of the right shoulder with chronic shoulder pain and exertional dyspnea, plus a previous finding of acute otitis media. The report also provided for right shoulder strain acute, along with strain of the right calf muscle, and a diagram provided for tenderness over the area of the right shoulder blade and the trapezius muscle. The report also provided there was full range of passive motion without pain and with no tenderness. There was swelling of the right lower leg with no tenderness. An x-ray of the shoulder was taken. A finding of right shoulder strain and strain of the right calf muscle was made and the claimant was prescribed baclofen, ibuprofen, and cyclobenzaprine and discharged home. The treating physician was Dr. Brian Hohertz, Associate Professor of Emergency Medicine. An x-ray of the tibia/fibula provided there was no fracture, with no soft tissue abnormality seen. An x-ray of the right shoulder provided for moderately advanced acromioclavicular osteoarthritis. This report provided that the claimant was traveling at approximately thirty-five (35) mph at the time of the accident. (Cl. Ex. 1, PP. 1-23) The claimant again

returned to the UAMS ER on May 14, 2022, with the complaint of acute midline back pain without sciatica. The claimant provided that his airbags deployed but denied a loss of consciousness. He also provided he had severe lower back pain that had been slowly worsening. He denied any weakness or numbness and was diagnosed with acute midline low back pain without sciatica. His cervical back had a normal range of motion with tenderness of the lumbar back. A CT was ordered. The CT provided there was no acute fracture or traumatic malalignment of the lumbar spine with lumbar spondylosis most prominent at the L4-5 level with a mild diffuse disc bulge and ligamentum flavum thickening causing mild spinal canal stenosis with mild neural foraminal narrowing. (Cl. Ex. 1, PP. 24-37)

At this point, the claimant stopped treatment with UAMS and presented to Flex Worx, on May 25, 2022. The claimant presented with headaches, neck pain, low back pain, right forearm pain, left forearm abrasion, right shoulder pain, right lower leg pain, and right lower extremity numbness and tingling. The report provided the claimant was in a motor vehicle accident and had previously been recommended for a right shoulder repair, which was not undertaken. The report provided the claimant contended he was suffering headaches with pain five (5) out of ten (10); neck pain five (5) out of ten (10); low back pain seven (7) out of ten (10); right shoulder pain four (4) out of ten (10); right forearm pain four (4) out of ten (10); left forearm abrasion zero (0) out of ten (10); right hip pain seven (7) out of ten (10); right lower leg pain two (2) out of ten (10); and right lower leg numbness and tingling. His pain prior to the May 11, 2022, motor vehicle accident was two (2) out of ten (10). The claimant was diagnosed with acute cervical sprain with acute headache secondary to the sprain, acute lumbar sprain, acute trapezius

strain, right forearm strain, right lower extremity strain and contusion, right lower extremity numbness and tingling, and acute right shoulder sprain with an exacerbation of a previously existing injury. It was recommended that the claimant work with restrictions. (Cl. Ex. 1, PP. 38-41) An x-ray dated May 31, 2022, of the cervical spine provided that there were no fractures or dislocations. There were some degenerative changes of the pelvis and there were no fractures or dislocations involving the right hip. (Cl. Ex. 1, P.42)

The claimant returned to Flex Worx on June 14, 2022, and the report provided that the acute cervical spine strain had mild improvement, that the acute headaches had resolved, the acute lumbar sprain, trapezius sprain and right lower extremity strain all had mild improvement with mild improvement of the right hip pain. An MRI of the lower back was recommended. It was also recommended that the claimant work with restrictions. (Cl. Ex. 1, PP. 43-45)

An MRI dated June 30, 2022, of the lumbar spine, was performed at the Imaging Group of the Mid-South and was apparently read by Alex Cleveland, NP. It provided that the claimant had a mild disc bulge at L2-3, and L3-4. (Cl. Ex. 1, PP. 46-47) The claimant returned to Flex Worx on July 8, 2022, and the report provided for tenderness of the lumbar spine along with tenderness to palpitation of the right hip. The report provided that the claimant could work without restrictions. (Cl. Ex. 1, PP. 48-50) The claimant returned to Flex Worx on July 27, 2022, and the report provided the claimant should continue work with no restrictions. (Cl. Ex. 1. PP. 52-54)

On August 22, 2022, the claimant made an initial visit to Mt. Moriah Orthopedics, and visit notes dated September 1, 2022, provided the claimant was seen for neck and cervical pain, along with hip pain. The report provided that the cervical spine and

lumbosacral spine range of motion was severely limited. (Cl. Ex. 1, PP. 55-65) An MRI of the cervical spine dated September 15, 2022, provided there was a posterior disk herniation in the midline causing mild cord compression at C2-3, broad based disk herniation due to uncovertebral joint hypertension, which caused mild cord compression, and also a posterior disk herniation in the midline causing mild cord compression. At C5-6, there was a left foraminal herniation causing moderate narrowing of the left neural foramen, and at C6-7 there was a left central /subarticular foraminal herniation with mild cord compression. (Cl. Ex.1, PP. 66-67) An MRI of the right knee also dated September 15, 2022, provided for a grade 3 oblique tear involving the under surface of the posterior horn of the medial meniscus and also provided for a horizontal tear involving the undersurface of the anterior horn of the medial meniscus. (Cl. Ex. 1, P. 68) An MRI of the right hip on the same date provided the right hip was normal. (Cl. Ex. 1, P. 69) There was a follow-up with Kay Lynn Brunt, PA-C, also on September 15, 2022. The report provided that non-operative treatment of neck pain, cervical radiculitis, facet joint syndrome, and lumbar herniated disc pain was effective in most cases. In regard to low back pain, the importance of strong low back and stomach muscles were stressed. The report also provided that many patients can be successfully treated with conservative interventions for hip and knee pain. (Cl. Ex. 1, PP. 70-78)

The claimant was seen by Dr. Brian Reece on October 6, 2022, for an epidural cervical steroid injection based upon a diagnosis of a herniated disc and cervical radiculopathy. An epidural lumbosacral injection was also provided. (Cl. Ex. 1, PP. 79- 89) The claimant returned on October 20, 2022, and later on November 16, 2022, for follow-ups and was seen by Kay Lynn Brunt, PA -C. (Cl. Ex. 1, PP. 90-110)

On November 18, 2022, the claimant received bilateral cervical rhizotomies at C3-C7 and bilateral lumbar rhizotomies at L3-S1, performed by Dr Brian Reece. (Cl. Ex. 1, PP. 111-112) The claimant then presented for a follow-up with Kay Lynn Brunt, PA-C, on December 1, 2022. Her report provided that the neck pain with radicular symptoms was resolving but the right hip pain and low back pain continued. The right knee pain was minimally improved. (Cl. Ex. 1, PP. 113-122) The claimant also received physical therapy from May 31, 2022, through August 29, 2022. The reports provided that the claimant attended all prescribed treatments but did not meet his goals and was referred to a neurosurgeon “per M.D.” (Cl. Ex. 1, PP. 123-148)

Finally, a copy of the motor vehicle crash report regarding the accident of May 11, 2022, was provided. It basically confirmed the claimant’s description of the accident and that the other driver pulled out in front of him. The impact was sufficient to require both vehicles to be towed from the scene with the claimant’s vehicle airbags being deployed. The claimant complained of chest pain due to the airbag deployment and stated he would seek his own medical care. (Cl. Ex. 1, PP. 149-161)

The respondents also introduced a previous Opinion issued involving a workers’ compensation claim of the claimant dated February 5, 2013. The Opinion was admitted over the objection of the claimant. The claimant contended that he had suffered a compensable injury to his right wrist and the Opinion found the claimant failed to prove his right wrist injury arose out of and in the course of his employment based upon a number of factors. (Resp. Ex. 1)

The respondents also submitted the deposition taken on April 27, 2023, of the claimant, which was admitted without objection. The claimant admitted to a prior workers

compensation claim while working for Fence World. He stated he injured his shoulder at the time of a previous accident and the case was settled for either 22 or 42 and that he had gotten over the shoulder problem. He testified that the shoulder hurts every now and then and he had taken medication for it. (Resp. Ex 2, PP. 3–5) He admitted to four workers' compensation claims while working for Fence World. (Resp. Ex. 2, PP. 7-8) He agreed he had never had surgery in regard to his shoulder, that he had some permanent damage, was restricted to lifting five or ten pounds, but the restriction was no longer in place. (Resp. Ex 2, P. 9) When asked if he was picked up by the ambulance, the claimant responded, "No. The guy in the office, he was our secretary." He also thought that he was going about forty-five (45) MPH at the time of the accident. (Resp. Ex 2, PP. 13-14)

His right leg was hurting after the accident, his "gas pedal leg." He was checked out after the accident and thought that he was out of work for a week. He then returned to work and could not perform his regular duties and consequently worked light-duty. (Resp. Ex. 2, PP. 15-17) At the time of the deposition, the claimant stated he had injured his right leg, low back, and neck, but that his right shoulder was not affected. (Resp. Ex. 2, P. 20) He was sent to the doctor in Memphis by his attorney Blake. He also stated surgery was not recommended. (Resp. Ex. 2, P. 21) At the time of his deposition, the claimant stated he was no longer going to the doctor because of the treatment he had received for his back and neck made him feel a lot better. His knee just gives him a little bit of problems now and then. The claimant also stated he did not have group insurance and he guessed his medical treatment had been paid by Blake, the attorney. (Resp. Ex. 2, P. 23)

DISCUSSION AND ADJUDICATION OF ISSUES

The claimant objected to the admission of an Opinion issued regarding one of his previous workers' compensation claims. It is well known that the Commission is given broad discretion in the admission of evidence and shall use a liberal interpretation in regard to the admission of evidence, conducting the hearing in a manner as will best ascertain the rights of the parties. Ark. Code Ann. §11-9-705(a). In the present matter the claimant was questioned and admitted to multiple previous workers' compensation claims with no objection. The Opinion involved one of the previous claims and consequently, was admitted and given the appropriate weight.

Regarding the primary issue of compensability of the injury, the claimant has the burden of proving, by a preponderance of the evidence, that he is entitled to compensation benefits for the injury under the Arkansas workers' compensation law. In determining whether the claimant has sustained his burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. §11-9-704. *Wade v. Mr. Cavananugh's*, 298 Ark. 364, 768 S.W. 2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. *Weldon v. Pierce Brothers Construction Co.*, 54 Ark. App. 344, 925 S.W.2d 179 (1996).

There is no disagreement that the claimant was involved in a work-related motor vehicle accident on May 11, 2022. The un rebutted evidence provided that the claimant was driving to the next work site at an estimated thirty-five (35) to forty-five (45) miles per hour, when a women pulled out in front of him and a collision occurred. The impact of the vehicles was sufficient to deploy claimant's front airbags and damage both vehicles sufficiently to require a tow from the accident scene. The claimant was not taken to UAMS

by ambulance immediately but was later taken to the ER and dropped off after going to the office. A person who apparently was the secretary of the company, per the claimant's testimony, appeared at the accident scene with the motor vehicle insurance papers and picked the claimant up after he was extricated from the work vehicle that he was driving.

From this point, the testimony of the claimant and the medical reports become somewhat confusing. The initial visit to the UAMS ER on May 11, 2022, provided that the claimant suffered from a right shoulder strain and the x-ray of the shoulder provided that the claimant suffered from moderately advanced acromioclavicular osteoarthritis of the shoulder. The report provided that the claimant was traveling at approximately 35 mph at the time of the accident and in addition provided for a calf muscle strain. The x-ray of the tibia/fibula provided there was no fracture and no soft tissue abnormality. The claimant returned to the UAMS ER on May 14, 2022, with a complaint of acute midline back pain without sciatica. His cervical back was found to have a normal range of motion with tenderness in the lumbar area. A CT was ordered which provided there was no acute fracture or traumatic malalignment of the lumbar spine with lumbar spondylosis most prominent at the L4-5 level, with a mild diffuse disc bulge and ligamentum flavum thickening causing mild spinal canal stenosis with mild foraminal narrowing. The claimant testified he had retained an attorney (Blake) at this point to represent him in his third-party claim, and he consequently never returned to UAMS because his attorney for the third-party claim sent him elsewhere for treatment.

The claimant's next medical record was with Flex Worx on May 25, 2022, two (2) weeks post-accident and provided that the accident exacerbated the claimant's previous problems. Another x-ray of the cervical spine on May 31, 2022, provided for no fractures

or dislocations. An x-ray of the hip showed degenerative changes of the pelvis with no fractures or dislocations. The claimant continued to treat with Flex Worx and received an MRI of the lumbar spine, which was read by Alex Cleveland, NP, on June 30, 2022. It provided for a mild disc bulge at L2-3, and L3-4. Flex Worx provided that the claimant could return to work with no restrictions on July 27, 2022.

Approximately three (3) months after the motor vehicle accident on August 22, 2022, the claimant received a MRI of the cervical spine which provided for disc herniations in regard to C2-3 and C5-6. An MRI of the right hip on the same date provided that the hip was normal.

The claimant contended that the motor vehicle accident injured his lower back, hip, neck, and the lower part of his right leg and there was an issue with his right shoulder. These complaints varied somewhat over time. He also testified that he felt that the treatment he received at the UAMS ER was not thorough and that he felt that Dr. Crosby who reviewed the MRI of his lumbar spine did not treat him well. He testified that he had been involved in four workers' compensation claims in his deposition and admitted to 8 previous claims in his testimony at the hearing. He clearly had more than an average amount of knowledge in regard to a workers' compensation claim.

Under workers' compensation law in Arkansas, a compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability and must be stated within a degree of medical certainty. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. *Liaromatis v. Baxter County Regional Hospital*, 95 Ark. App. 296, 236 S.W.3d 524 (2006). More specifically, to prove a

compensable injury, the claimant must establish, by a preponderance of the evidence: (1) an injury arising out of and in the course of employment; (2) that 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, as defined in Ark. Code Ann. §11-9-102 (16) establishing the injury and (4) that the injury was caused by a specific incident and identifiable by time and place of occurrence. If the claimant fails to establish any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Objective findings are those findings that cannot come under the voluntary control of the patient. Ark. Code Ann §11-9-102(16). It is also important to note that the claimant's testimony is never considered uncontroverted. *Lambert v. Gerber Products Co.*, 14 Ark. App. 88, 684 S.W.2d 842 (1985).

Here the medical records in regard to the claimed injuries make no objective findings in regard to the claimant's problems being caused by the accident. The claimant clearly was suffering from bursitis and osteoarthritis of varying degrees. The MRI of the hip in August showed that the hip was normal. The MRI of the cervical spine provided there were disc herniations, but there was no opinion provided as to the cause. An MRI of the right knee also in September provided for a tear of the meniscus, but again provided no opinion as to the cause of the tear. There was an approximate three (3) month gap between the cervical and knee MRIs and the date of the motor vehicle accident. The CT of the back shortly after the motor vehicle accident taken at UAMS provided for no acute fracture or traumatic malalignment of the lumbar spine with lumbar spondylosis with a

mild diffuse disc bulge and ligamentum flavum thickening causing mild canal stenosis with mild foraminal narrowing, a finding not related to the accident. Here, the claimant's testimony is the primary evidence that connects all the claimed injuries to the motor vehicle accident. Consequently, the claimant has failed to satisfy the required burden of proof regarding all of these claimed injuries. *See, Luster v. Ben E. Keith Co.*, 2012 Ark. App. 197 (2012) "Objective findings" are based on observable criteria perceived by someone other than the claimant. *Continental Exp., Inc. v. Freeman*, 66 Ark. App. 102, 989 s.W.2d 538 (1999).

In regard to claimant's first visit to the UAMS ER on May 11, 2022, the unrebutted testimony is that an employee from the company appeared with the insurance papers regarding the vehicle in the accident. In addition, the same employee picked up the employee from the scene and returned him to the office. Later on the day of the accident the claimant was taken to the ER by what appears to be someone from work and dropped off. An employer is generally only responsible for medical expenses when an employee is determined to have suffered a compensable injury. *See, Ark. Code Ann. §11-9-102(5)(F)(i)*. However, in the case at hand, the respondent dropped off the claimant at the UAMS ER on May 11, 2022, sometime after the accident on the same date. The respondent was clearly aware of the facts of the accident, the claimant would have clearly believed he was entitled to treatment after the accident after turning down an ambulance but later being dropped off at the ER. The claimant was unknowledgeable of the true facts regarding the injury at the time he entered the ER and would have relied on the actions of the respondent. *See, Snow v. Alcoa*, 15 Ark. App. 205, 691 S.W.2d 194 (1985) Consequently the initial UAMS ER visit is found to be authorized as the claimant

was taken to the emergency room to be evaluated. *See, Britain v. Southern Hospitalities*, 54 Ark. App. 318, 925 S.W.2d 810 (1996). Respondents are found to be estopped from denying the responsibility of the initial employer-directed visit to the ER, notwithstanding the fact that the injury was not found to be compensable. The Arkansas Compensation Act provides that an employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a). However, the second visit to UAMS ER is found to not be the employer's responsibility pursuant to Arkansas law.

In addition, it is again noted that there are no objective findings in regard to the injury to the right lower leg, except for swelling, and no finding as to the cause of the swelling. A workers' compensation claimant bears the burden of proving the compensable injury, by a preponderance of the evidence. Ark. Code Ann. §11-9-102(4) (E)(i). A compensable injury is one that was the result of an accident that arose in the course of his employment and that grew out of or resulted from the employment. *See, Moore v. Darling Store Fixtures*, 22 Ar. App 21, 732 S.W.2d 496 (1987) Based upon the available evidence in the case at bar, there is no alternative but to find that the claimant has failed to satisfy the required burden of proof to show he suffered a work-related injury consisting of a strain and work-related injuries to his right lower leg and knee. In addition, based upon the available evidence in the case at bar, there is no alternative but to find that the claimant has failed to satisfy the required burden of proof as to the additional claimed injuries to various body parts.

In regard to temporary total disability (TTD), the claimant contended at various times that he had missed a variety of days from work. He stated that he had records but

that he had failed to bring them. He also testified that he had worked light-duty, sweeping floors, and driving people around. Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages. *Arkansas State Highway and Transportation Department v. Breshears*, 72 Ark. App. 244, 613 S.W.2d 392) The claimant bears the burden of proving he remains within his healing period and in addition, suffers a total incapacity to earn pre-injury wages in the same or other employment. *Palazzo v. Nelms*, 46 Ark. App. 130, 877 S.W.2d 938 (1994) There are no medical records providing that the claimant should have been off of work for a specific period of time. It is noted that persistent pain is not sufficient in itself to extend the healing period or to find the claimant totally incapacitated from earning wages. *See, Mad Butcher v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). Temporary total disability can not be based upon speculation or conjecture. Consequently, there is no alternative but to find that the claimant has failed to satisfy the required burden of proof that he is entitled to temporary total disability.

After weighing the evidence impartially, without giving the benefit of the doubt to either party, it is found that the respondents are found to be estopped from denying the responsibility for the initial employer-directed visit to the UAMS ER, notwithstanding the fact that the injury was not found to be compensable. The respondents are found to not be responsible for the second UAMS ER visit. In addition, the claimant has failed to satisfy the required burden of proof that his claim for an injury which constituted a strain to his right lower leg and additional injuries to the right leg and knee are compensable. The claimant has also failed to satisfy the required burden of proof that his claims for all remaining injuries are compensable. Consequently, the question of medical treatment

for all these claimed injuries and for attorney fees are moot, with the exception of the medical treatment involved in the initial ER visit. The claimant has also failed to satisfy the required burden of proof for TTD. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

JAMES D. KENNEDY
Administrative Law Judge