

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H009491

JOSHUA BAKER, EMPLOYEE	CLAIMANT
INTERNATIONAL PAPER COMPANY, EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED APRIL 8, 2022

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

Claimant represented by the HONORABLE MICHAEL L. ELLIG, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE JACK TALBOT, Attorney at Law, Pine Bluff, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law

Judge filed December 13, 2021. In said order, the Administrative Law

Judge made the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on June 23, 2021, and contained in a Pre-hearing Order filed June 25, 2021, are hereby accepted as fact.
2. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his left knee and low back on November 12, 2020.

3. The claimant has failed to prove that he is entitled to medical treatment for his back and additional medical treatment to his left knee.
4. The claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits.
5. The claimant has failed to prove that his attorney is entitled to an attorney's fee in this matter.

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 13, 2021 decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Therefore we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

CHRISTOPHER L. PALMER, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

After my de novo review of the record in this claim, I dissent from the majority opinion finding that, *inter alia*, that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his left knee and low back on November 12, 2020; the claimant has failed to prove that he is entitled to medical treatment for his back and additional medical treatment to his left knee; the claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits; and the claimant has failed prove that his attorney is entitled to attorney's fee in this matter.

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. §11-9 - 102(4)(A)(i) (Repl. 2012), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course

of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical 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 (4)(D), establishing the injury; and (4) proof by a preponderance of the evidence that 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).

Left knee injury

The evidence preponderates that the claimant's left knee injury satisfies the requirements of compensability. The claimant sustained injuries while performing employment services on November 12, 2020. There were objective findings of the left knee injury in the form of positive valgus and varus stress tests on November 12, 2020, November 13, 2020, November 19, 2020, and December 11, 2020. In addition, this injury required medical treatment in the form of prescription medication.

Low back injury

The evidence also preponderates that the claimant's low back injury satisfies the requirements of compensability. The claimant sustained

injuries while performing employment services on November 12, 2020.

There were objective findings of the low back injury in the form of muscle spasms documented on March 10, 2021. In addition, this injury required medical treatment in the form of prescription medication. The claimant was also referred to physical therapy.

The claimant suffered from back pain prior to his workplace accident. However, a pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. See, *Nashville Livestock Commission v. Cox*, 302 Ark. 69, 787 S.W.2d 664 (1990); *Conway Convalescent Center v. Murphree*, 266 Ark. 985, 585 S.W.2d 462 (Ark. App. 1979); *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996). The employer takes the employee as he finds him. *Murphree, supra*. In such cases, the test is not whether the injury causes the condition, but rather the test is whether the injury aggravates, accelerates, or combines with the condition.

The claimant's low back condition worsened after his workplace accident. Shortly after the accident, the claimant's low back pain increased. Prior to his work accident, the claimant was able to work without limitations

or restrictions. However, the claimant testified that he is no longer able to work because “excruciating pain” caused by his back injury.

Based on the aforementioned, I find that the claimant has established by a preponderance of the evidence that he sustained compensable left knee and low back injuries.

For the foregoing reason, I dissent from the majority opinion.

M. SCOTT WILLHITE, Commissioner