BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G702278

FRANCEINE CHANCE, EMPLOYEE **CLAIMANT**

LOWE'S HOME CENTERS, LLC,
SELF-INSURED EMPLOYER **RESPONDENT**

SEDGWICK CLAIMS MANAGEMENT SERVICES **RESPONDENT**

OPINION FILED MARCH 29, 2022

Hearing before Administrative Law Judge, James D. Kennedy, on the 18TH day of January, 2022, in Little Rock, Pulaski County, Arkansas.

Claimant is represented by Mr. Gary Davis, Attorney-at-Law, Little Rock, Arkansas.

Respondents are represented by Mr. Randy P. Murphy, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 18th day of January, 2022, to determine the issues of compensability of an injury to the lower back, medical treatment in regard to the lower back injury, and attorney fees. The respondents accepted an injury to the left knee which occurred on April 2, 2017, but controverted the claimed injury to the lower back. 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 has jurisdiction of the within claim and that an employer/employee relationship existed on April 2, 2017, when the claimant sustained a compensable work- related injury to her left knee. The Order further provided the claimant earned a weekly wage of $542.00 per week, sufficient for a temporary total disability/permanent partial disability rate of $361.00 and $271.00 per week, respectively, and the respondents paid medical and temporary total disability benefits in regard to the left knee injury. There was no objection to these stipulations.

The claimant's and respondent's contentions are all set out in their respective responses to the Prehearing Questionnaire and made a part of the record without objection. The sole witness was the claimant, Franceine Chance. 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 Ark. Code Ann. §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 April 2, 2017, the date of the left knee injury, which was accepted as compensable by the respondents. The respondents paid medical and temporary total disability benefits in regard to the left knee injury and also have paid a fifty percent (50%) impairment rating in regard to the knee injury.

3. The claimant earned an average weekly wage of $542.00.20 a week, sufficient for a temporary total disability/permanent partial disability rate of $361.00/$271.00, respectively, per week.

4. That the claimant has satisfied the required burden of proof to show that she sustained a compensable work-related injury to her lower back on April 2, 2017.

5. That the claimant has satisfied the required burden of proof that she is entitled to reasonable and necessary medical treatment for her work-related lower back injury which would include the minimally invasive left laminectomy at L 3-4 and L 4-5.

6. The claimant is entitled to attorney fees pursuant to Ark. Code Ann. §11-9-715. This Award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809.

7. 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 and the claimant's amended response to the Prehearing Questionnaire were admitted into the record without objection. The claimant submitted three (3) exhibits that were admitted without objection: (1) eighteen (18) pages of medical records; (2) the reports of Doctors Weber and Newbern, along with emails consisting of thirty-five (35) pages; (3) additional medical reports from Doctors Frankowski, Walker, and Seale, consisting of forty-two (42) pages. The respondents also submitted medical reports which consisted of one hundred forty-four (144) pages and was also admitted without objection.

The claimant testified she was sixty-seven (67) years old at the time of the hearing and had a high school education. She had been working at Lowes since April of 2017, working as a floor associate at the time of the accident. She went to assist in another department where there was a metal pallet used to carry wood and other items out and was loaded with OSB. The claimant and another person were attempting to push the cart loaded with the OSB out to a truck when the OSB slid off, throwing the claimant back and hitting her leg, causing a tibial fracture. This resulted in the claimant losing one inch (1") from her left leg. The claimant stated she landed on her tail bone and consequently had surgery, which was performed by Doctor Michael Weber the following day. She continued having problems and a second surgery was later performed by Doctor Weber on August 21, 2017, where bone fragments were removed by arthroscopic knee surgery. (Tr. 6, 7). On or about January of 2018, the claimant received a total knee replacement by Doctor Weber, but her problems continued. She was eventually diagnosed with RSD and received some injections in her back, primarily by Doctor Frankowski. (Tr. 8, 9) She also

received physical therapy and medications, but continued to have problems and was then referred to Doctor Seale on or about October 7, 2020. The claimant testified Doctor Seale recommended low back surgery, and she was ready for it because her problems were getting worse. She also testified that the insurance company was paying for her treatment until the recommendation for the back surgery. (Tr. 10)

After the accident, the claimant stated that she was in a brace for seven (7) months to hold her leg up and was going through rehab. (Tr. 11) She was in "extreme pain" with the pain going all of the way down her tibia where it was fractured, and going all the way to her back, and she couldn't feel the toes on her left side. (Tr. 12) The pain was "like somebody shooting a cattle prod all the way through my leg." She also stated she had been using a walker since the beginning. (Tr. 13) She can place weight on the leg but not for very long. She also stated that she had been placed on opioids for a while, but flushed them and then told the doctor that "I am not taking that stuff, it's making me crazy." The injections helped, but just not long enough. Sedgwick told the claimant that they could not do the injections anymore. (Tr. 14, 15) Prior to the accident, the claimant stated she did not have any problems with her back. In regard to the actual injury, the claimant testified she had helped load vehicles and had picked up fifty (50) or sixty (60) pound bags of mulch in the past, prior to the accident. (Tr. 16, 17)

Under cross-examination, the claimant admitted living with her brother and drawing regular social security retirement, but not social security disability. She denied working for anyone since the accident. (Tr. 20) She stated she was using Medicare to pay for her prescriptions that were for both her back and knee. "There is no separation." She also stated she was still having symptoms with her left leg but that it had improved a little bit

after the three (3) surgeries. (Tr. 21) In regard to the degree of pain and rating it on a scale of one to ten, the claimant testified, “I hate that one to ten. The doctors did that, too, and it’s like I don’t know anymore. It’s like I’ve been in pain for so long, how do you give that a number?” She went on and stated the pain was constant and she would give it a six (6) to seven (7). The pain sometimes radiates and in “comes in spurts.” (Tr. 22, 23) She also stated she was not able to do much weight-bearing on her left leg. She denied having pain or numbness in her right leg. (Tr. 23, 24) She admitted taking pain medications prescribed by her primary care physician, Doctor Whitney Reed. She supplemented the pain meds with over-the-counter medications. (Tr. 25) The claimant also stated she was not receiving any workers’ compensation benefits at this time. (Tr. 26)

In regard to her back pain, she stated the pain started when she got off the pain medicine. When she got hurt, she was taken to the hospital. She was knocked out that night and had surgery the next day. When she woke up, she was on pain medications, opioids. When she got through rehab, she knew something was not right, and she did not want to take the pain meds anymore. That’s when they prescribed gabapentin and she has been on them ever since. The back pain started when she was taken off the opioids. She admitted to receiving one MRI of the lower back and maybe a second one. (Tr. 27, 28) She stated that her lower back pain was all the way across. She also admitted Doctor Seale performed a clinical examination of her on both office visits but denied she saw the documented results. She was specifically asked about the report providing that pain was not radiating at that time down her leg. (Tr. 29) She responded that she never had that issue with her right leg, but that it always had been her left leg.

The claimant also denied she was walking normally at the time of the office visit and that Doctor Seale went over the MRI with her. She admitted she requested surgery on the second visit. In regard to the first visit, she was requesting "pain intervention." She also testified she was not aware she suffered from degeneration and stenosis. (Tr. 30, 31) She was not aware that the report provided she had full range of motion in her hip without pain or tenderness, signs of instability or muscle spasms, and good strength and that the report also provided she was walking normally with good coordination and balance. (Tr. 32) She admitted she requested pain intervention and was not aware that the MRI failed to show a fracture or disc protrusion. She denied that Doctor Seale went over the MRI with her. She was not aware that she had degeneration prior to the accident. (Tr. 31)

In regard to her second MRI and another visit to Doctor Seale, she stated that she was not aware that his examination provided no signs of radiation, and that she had full range of motion in the hip without pain or tenderness, signs of instability, or muscle spasms, and good strength. (Tr. 32) She admitted Doctor Seale did mention a minimally-invasive laminotomy and that she was essentially requesting surgery due to the fact that she was gradually getting worse. (Tr. 33)

The claimant's first exhibit consisted of eighteen (18) pages of medical records. The first report dated April 2, 2017, from Doctor James Arnold, provided that the patient presented with pain in her left knee and that she reported an acute onset of left knee pain due to an accident involving a metal cart. She denied a head or back injury. The report provided under plain x-rays of the left tibial plateau fracture. (Cl. Ex. 1, P. 1 – 4) Surgery was performed on April 3, 2017, by Doctor Weber, and the report provided the claimant

was injured the day before and was brought to the emergency room. It was found she suffered a deeply depressed lateral tibial fracture which was repaired. (Cl. Ex. 1, P. 5 – 6) The claimant returned to Doctor Weber for a follow up on April 27, 2017, and the report provided that the fracture alignment was excellent and the hardware had not migrated. The wound had healed beautifully and the claimant was recommended to remain non-weight bearing for another three (3) weeks. (Cl. Ex. 1, P. 7) The claimant again returned to Doctor Weber on May 18, 2017, and the report recommended continued non-weight bearing, discontinuing the knee immobilizer, and the start of physical therapy. (Cl. Ex. 1, P. 8) The claimant returned for another follow-up on June 29, 2017, and the x-ray showed the claimant had reached an advanced stage of healing and should start weight-bearing and gait training. (Cl. Ex. 1, P.9) The claimant again returned to Doctor Weber on July 25, 2017, and the x-rays looked good but the report provided that Doctor Weber would like an MRI to determine if the lateral meniscus was torn or misplaced. (Cl. Ex. 1, P. 10, 11)

An MRI of the left knee was provided on August 3, 2017. Under impression, the report provided findings that suggested anterior horn lateral meniscal degeneration or tear with the characterization being severely limited by artifact. “Quadriceps tendon attachment tendinosis versus low-grade intrasubstance tear.” (Cl. Ex. 1, P. 12) The claimant then returned to Doctor Weber on August 10, 2017, for a nineteen (19) week assessment of the lateral tibial plateau left fracture. The report recommended arthroscopic surgery to see if there was something torn or loose in the lateral compartment due to the fact that the MRI of the left knee was severely degraded by a metal artifact, and the radiologist felt that the claimant could have a torn lateral meniscus.

(Cl. Ex. 1, P. 13) Surgery was then performed on the left knee on August 21, 2017, with the post-operative diagnosis being a torn lateral meniscus and osteoarthritis of the left knee. (Cl. Ex. 1, P 14, 15) Claimant returned to Doctor Weber for a follow-up for the arthroscopic surgery of the left knee on August 29, 2017. The report provided that the claimant would be sent to physical therapy. (Cl. Ex. 1, P. 16) A follow-up occurred on November 9, 2017, and the report provided that x-rays were ordered and that an off loader brace was ordered. (Cl. Ex. 1, P. 17)

Claimant's second exhibit consisted of thirty-five (35) pages of medical reports and emails. The claimant returned to Doctor Weber's office on January 23, 2018, for a two (2) week follow-up on a left knee total arthroplasty due to trauma. The report provided that the claimant was healing nicely and should continue physical therapy. A radiology report on the same date provided that the claimant's knee components were in the perfect position. (Cl. Ex. 2, P. 1, 2) The claimant again returned to Doctor Weber on February 20, 2018, and the report provided the claimant's knee components were still in the correct place, that she could full weight-bear, and that the plan was to stop physical therapy and remain off work. (Cl. Ex. 2, P. 3, 4) The claimant again returned to Doctor Weber on March 13, 2018. This report provided that the knee was completely healed and appeared normal. The report further provided that the claimant's pain was out of proportion with the physical and x-ray findings. A triple phase bone scan was recommended to see if some type of RSD had occurred. The bone scan was performed on April 2, 2018, and provided for delayed phase periprosthetic foot activity left and right side with no increased blood flow. Atypical RSD would be in the differential diagnosis with degenerative uptake. (Cl. Ex. 2, P. 5, 6) The claimant then returned to Doctor Weber the following day and the

report provided that this must in some way be related to RSD. X-rays on the same date provided that the left knee components were in perfect position with no signs of loosening breakage or asymmetric wear. (Cl. Ex. 2, P. 7 - 9)

The claimant was then referred by Doctor Weber to the Arkansas Spine and Pain Center where she was seen by Doctor Qureshi on June 6, 2018. After the exam, he scheduled the claimant for a left lumbar sympathetic block with Doctor Erdem, which was provided to the claimant on May 13, 2018, and the report stated under assessment and plan, for a finding of complex regional pain syndrome. (Cl. Ex. 2, P 10 – 13) The claimant returned to the Arkansas Spine and Pain Center on July 11, 2018, for a follow-up. The report provided that the claimant complained of pain in the left knee, neck, and lower back. The pain radiated to the left ankle, leg, and left knee and was made worse by movement and walking but got better with medications. The report went on to provide for a finding of Complex Regional Pain Syndrome and Reflex Sympathetic Dystrophy. Physical therapy was ordered. (Cl. Ex. 2, 14 – 17) The claimant returned to the Arkansas Spine and Pain Center on the dates of July 15 and September 10, of 2018. (Cl. Ex. 2, P 18 – 23)

The claimant again returned to Doctor Weber on September 13, 2018. The report provided that the claimant had ended up at Arkansas Spine and Pain where she received two (2) shots and they were discussing a spinal cord stimulator and the claimant was not happy about it. An x-ray of the left knee was ordered and everything appeared normal. The report went on to mention that the left total knee arthroplasty was complicated by probable reflex sympathetic dystrophy. (Cl. Ex. 1, P. 24-26) The claimant then again returned to Doctor Weber on November 20, 2018. X-rays were again ordered and the

components of the left knee were still in an excellent position. The report concluded that the claimant presented for an eleven (11) month follow-up with severe pain with no obvious cause but that chronic regional pain syndrome could account for this. (Cl. Ex. 2, P. 27 – 29)

On February 1, 2019, the claimant presented to Doctor Gordon Newbern as a referral from Doctor Weber, for an independent medical examination. The report provided she appeared to have Complex Regional Pain Syndrome affecting her left knee and leg. Physical therapy alone had not provided good, successful relief of pain, though she had gained fairly good motion. The lumbar sympathetic blocks gave her promising relief but were not aggressively pursued. The report went on to provide that the claimant should pursue aggressive evaluation and treatment with the Southern Regional Anesthesia Consultants or Doctor Carlos Roman. The report also provided that the claimant was not capable of any gainful employment. (Cl. Ex. 2, P. 30 – 32)

The claimant's third exhibit consisted of forty-two (42) pages of medical from Doctor's Frankowski, Walker, and Seale. The claimant saw Doctor Frankowski on April 24th, and May 1st, 2019. He diagnosed the claimant with complex regional pain syndrome and his plan provided for a left lumbar sympathetic block under fluoroscopy on the above dates. (Cl. Ex. 3, P. 1-3)

On May 8, 2019, the claimant presented to Doctor Brent Walker, who provided under assessment and plan that "I have told her that I have thought that this was RSD from the beginning of her poor result." (Cl. Ex. 3, P. 4) The claimant returned to Doctor Walker on July 24, 2019, and the report provided under impression for the finding of chronic regional pain syndrome type 1, of the left lower extremity and of posttraumatic

osteoarthritis. Lumbar sympathetic blocks were thought to be helpful and the possibility of a clonidine patch for the swelling and stiffness was also suggested. (Cl. Ex. 3, P. 5, 6)

On August 7th and the 21st, 2019, the claimant returned to Doctor Frankowski for a left lumbar sympathetic block. Then on August 28, 2019, Doctor Walker refilled her clonidine patch and increased her gabapentin. (Cl. Ex. 3, P. 11) The claimant then returned to Doctor Frankowski for a repeat lumbar sympathetic block, on September 11, 18, and the 25th, for a left lumbar sympathetic block. The claimant then returned to Southern Regional Anesthesia Consultants, presented to Elizabeth Jarvis, APRN, and stated that the clonidine patchers were not working. (Cl. Ex. 3, 12, - 16) Claimant continued to receive left lumbar sympathetic blocks on the dates of October 22, November 5 and 19, of 2019. (Cl. Ex. 3, P. 17 – 19) On November 27, 2019, the claimant again presented to Elizabeth Jarvis, APRN, whose report provided that another series of lumbar sympathetic blocks would be scheduled, as well as an MRI. (Cl. Ex. 3, P. 20) The MRI of November 29, 2019, provided for multilevel disk bulges with facet hypertrophy and prominence epidural fat resulting in varying degrees of spinal canal and neural foraminal narrowing with the spinal cord narrowing being the most severe at L3-L4 and L4-L5. (Cl. Ex. 3, P. 21) Claimant received additional left lumbar sympathetic blocks on December 17th, December the 31st, 2019, and also January 14th, 2020. (Cl. Ex. 3, P. 23 - 25) The claimant also received a left transforaminal epidural steroid injection on January 28, 2020, and then returned to Elizabeth Jarvis, APRN, on February 11, 2020. (C. Ex. 3, P. 26, 27) The plan provided for a refill of the gabapentin and for a series of three (3) lower lumbar sympathetic blocks. (Cl. Ex. 3, P. 27) The claimant received more lumbar sympathetic blocks on March 24, April 7, and April 21, 2020, and

the claimant provided she had a good block the last time with seventy percent (70%) relief for two (2) weeks. (Cl. Ex. 3, P. 28 – 30) On May 6, 2020, the claimant again presented to Elizabeth Jarvis, APRN, where she provided that she had received better relief from the left transforaminal L4-L5, and the report provided that one would be scheduled. (Cl. Ex. 3, P. 31)

On June 3, 2020, the claimant again presented to Elizabeth Jarvis, APRN, by telehealth. The claimant stated that her pain was intense, up to a nine (9), and she was depressed because she had been denied an injection that helped her in the past and she had been sent to another doctor. She stated her back was most tender near her waist at L3-L4. The report provided that the plan was to obtain another left transforaminal L4-L5 covered. She was also being referred to Doctor McCarthy to see if maybe a surgical evaluation would help her back. (Cl Ex. 3, P. 32, 33)

On July 13, 2020, the claimant presented to Doctor Jared Seale. The report provided for a lateral x-ray of the spine which revealed no spondylolisthesis. There was normal lordosis and facet arthropathy was also noted. The report further provided that an MRI of the lumbar spine on disc from January of 2019, was reviewed today which revealed mild to moderate central stenosis and lateral recess stenosis at L3-L4 with moderate central stenosis and moderate to severe lateral recess stenosis bilaterally at L4-5 with diffuse degeneration. The claimant had significant stenosis and subjective complaints of symptoms that match this more on the left side. We discussed today that a lot of the pain could be due to the asymmetric gait and the favoring of the left knee. Given the significant stenosis I do believe that decompression would be warranted. The plan provided for a minimally invasive left laminectomy at L3-4 and L4-5. There were no

objective findings of acute injury. However, the claimant's symptoms began after the work injury. The claimant had no history of pain in the low back or down the leg prior to the work injury. Therefore, it is within a certain degree of medical certainty that at least fifty-one percent (51%) of the claimant's current symptoms are directly related to their work injury. (Cl. Ex. 3, 34 – 36) On August 21, 2020, Doctor Seale received a report in regard to an MRI of the lumbar spine. The report provided under impression that spinal canal stenosis was mild to moderate at L3-L4, moderate at L4-L5, and mild at L5-S1. At L5-S1, a small-to-moderate central to right paracentral disc protrusion came in close proximity to the S1 nerve roots. The report went on to provide that there was left foraminal stenosis at L5-S1, a posterior annular fissure at L2-L3 and L4-L5, and mild-to-moderate degenerative endplate edema at L5-S1, which was asymmetric to the left. (Cl. Ex. 3. P. 37, 38) Doctor Seale's final report of record submitted by the claimant provided that his recommendation was for off work status until surgery was completed. "It is within a certain degree of medical certainty that at least fifty-one (51%) of the patient's current symptoms are directly related to their work history." (Cl. Ex. 3, P 39 – 41)

The respondents submitted one hundred forty (140) pages of medical records that were also admitted into evidence without objection. Many of the pages submitted were also submitted by the claimant and previously reviewed. A CT scan of the left knee was taken on April 2, 2017. It provided there was a comminuted, impacted fracture involving the lateral tibial plateau with the fracture extending into the tibial spines. A non-displaced component of the fracture was identified traversing obliquely across the medial tibial plateau. There was no fibular, patellar, or femoral fracture. (Resp. Ex. 1, P. 5, 6)

A status report from Baptist Health dated June 13, 2017, provided that the claimant's chief complaint at the time of the report was pain, 3 out of 10. The claimant reported decreased pain after the application of the kinesiotape yesterday. (Resp. Ex. 1, P. 45 - 47) An x-ray interpretation dated June 29, 2017, provided that the claimant was in an advanced stage of healing with no migration of her hardware. (Resp. Ex. 1, P. 49) Doctor Weber issued a return to work slip which provided that the claimant could return to work on seated duty only and was dated October 18, 2017. (Resp. 1, P. 53) A second return to work slip was issued by Doctor Weber on November 9, 2017, which provided that the claimant could return to work with seated sedentary duty only and must also be able to elevate the entire leg above the waist. (Resp. Ex. 1, P. 55) A radiology report dated January 10, 2018, provided that the left knee prosthesis presented with good alignment and was in a good position. (Resp. Ex. 1, P. 56 - 60) A return to work slip was again issued by Doctor Weber on November 20, 2018, which provided that the claimant must remain off of work at this time. (Resp. Ex. 1, P. 78) The claimant made an office visit to Doctor Weber on January 15, 2019, for a one year follow up, and the report provided that the claimant's recovery was complicated by reflex sympathetic dystrophy. The knee was not swollen but stiff. X–rays provided that the components of the left knee arthroplasty were in perfect position with no sign of loosening breakage or asymmetric wear. (Resp. Ex. 1, P. 80, 81)

Doctor Owen Kelly issued a medical record synopsis and opinion, dated May 17, 2020, addressed to respondent's attorney. Under OPINION/SUMMARY, Doctor Kelley opined that "Despite continued aggressive medical management and care, she continues to have pain. The result of her current treatment is giving less than therapeutic results,

and the relief of symptoms is minimal to mild. It has been three years since the initial injury, and at this point continued treatment seems to not be advantageous to her. I distinctly believe that she will not receive much benefit from continued treatment, and I do not believe revision knee replacement would help her current problem. The reality is that she will likely need to learn to live with her current condition and manage it with conservative measures like home therapy exercises, activity modification, and anti-inflammatories if able to take them." (Resp. Ex. 1, P. 119 – 123)

Doctor Kelly issued a later opinion addressed to the respondents attorney which referred to the claimant's clinic encounter date of July 13, 2020, where one of the claimant's multiple physicians provided "it is within a certain degree of medical certainty that at least 51% of the claimant's current symptoms are directly related to the work injury." Doctor Kelley provided under "Summary" that "I have reviewed her previous medical records and have not noted any complaints of back pain in the record as it relates to her initial work injury. Dr. Seale's notes confirm that her problems are pre-existing and there is no evidence of acute injury. It is my opinion that it would be difficult to associate the back pain/complaints with the injury since the findings appear to be pre-existing. (Resp. Ex. 1, P. 137, 138)

It is also noted that Doctor Seale issued a return to work/school slip on July 13, 2020, that provided the claimant should be excused from work on July 13 and 14, 2020, due to office visits to Doctor Seale. (Resp. Ex. 1, P. 135, 136)

DISCUSION AND ADJUDICATION OF ISSUES

In regard to the primary issue of compensability regarding the lower back injury, the claimant has the burden of proving, by a preponderance of the evidence, that she is

entitled to compensation benefits for the injury under the Arkansas Workers' Compensation Law. In determining whether the claimant has sustained her 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 injured her left knee on April 2, 2017, while assisting in the moving of a metal cart loaded with OSB, which slid off the cart injuring her left leg. The respondents accepted the left knee injury as compensable, paid for multiple surgeries involving the left knee, provided additional medical, paid temporary total disability in regard to the left knee injury, and paid a fifty percent (50%) impairment rating in regard to the knee injury. The claimant contends the incident on April 2, 2017, also caused the injury to her lower back and she is also entitled to reasonable and necessary medical for the lower back injury, which would include a minimally invasive left laminectomy at L3-4 and L4-5. The respondents contend that claimant's problems with her lower back are not work-related and compensable, and that her back issues are the result of stenosis and degeneration that involves the lower back.

The claimant testified she was assisting with the movement of a metal cart when the OSB loaded on the cart slid off, striking her. She was taken to the hospital and placed on pain medications and after spending the night, received surgery the next morning. She testified that she stayed on pain medications, including opioids, until getting through rehabilitation, when she determined that something was not right and demanded

to be taken off the opioid medications. She was then placed on gabapentin, plus over-the-counter medications and this was basically when the pain in her lower back became noticeable. The testimony in regard to her care and the medications that she received corresponds with the medical records that were made part of the record.

The claimant testified she was sixty-seven (67) years old at the time of the hearing and had not suffered problems with her lower back prior to the accident on April 2, 2017. No medical was introduced which provided that the claimant received treatment for lower back problems prior to the accident.

The claimant had three (3) surgeries involving her left knee, with the third surgery involving a total left knee replacement. She was seen by multiple providers who ordered many x-rays, a CT scan, and multiple MRI's. After multiple visits, and three (3) surgeries, Doctor Weber, the physician who performed the knee surgeries opined that the claimant's pain was out of proportion with the physical and x-ray findings and suggested a triple phase bone scan to determine if some type of RSD had occurred. The scan was performed and the report provided that atypical RSD was part of the differential diagnosis and that consequently, the claimant's problems were probably related to RSD. The claimant was referred to various pain physicians and received numerous injections, with some helping more that others. X-rays continued to show that the hardware in the knee was appropriately located. The claimant presented to Arkansas Spine and Pain Center at one point and the medical report provided for a finding of Complex Regional Pain Syndrome and Reflex Sympathetic Dystrophy. Doctor Weber opined in his report for the eleven (11) month follow-up regarding her knee surgery, that the only obvious cause of the severe pain was chronic regional pain syndrome.

On February 1, 2019, the claimant presented to Doctor Gordon Newbern for an independent medical examination and his report provided that the claimant appeared to have Complex Regional Pain Syndrome affecting her left knee and leg. The claimant continued to have issues and was then treated by Doctor Frankowski, who provided left lumbar sympathetic blocks under fluoroscopy and diagnosed the claimant with complex regional pain syndrome. On May 8, 2019, Doctor Brent Walker opined that "I have told her that I have thought that this was RSD from the beginning of her poor result." He issued a finding on July 24, 2019, that the claimant suffered from chronic regional pain syndrome type 1, of the lower extremity and of post-traumatic arthritis. The claimant continued receiving various lumbar sympathetic blocks and epidural steroid injections but continued to have issues with extreme pain.

On July 13, 2020, the claimant presented to Doctor Jared Seale who felt that a lot of the pain could be due to asymmetric gait and the favoring of the left knee. He opined that a minimally invasive laminectomy at L3-4 and L4-5 was recommended since no objective findings of acute injury were present, stating that the claimant had no history of pain in the low back or down the leg prior to the work injury. He went on to provide that "It is within a certain degree of medical certainty that at least 51% of the patients current symptoms are directly related to their work history."

Doctor Owen Kelly issued a medical record synopsis and opinion on May 17, 2020, addressed to the attorney for the respondents. It provided that "Despite continued aggressive medical management and care, she continues to have pain. The result of her current treatment is giving less that therapeutic results, and the relief of symptoms is minimal to mild. It has been three years since the initial injury, and at this point continued

treatment seems to not be advantageous to her." "The reality is that she will likely need to learn to live with her current condition and mange it with conservative measures like home therapy exercises, activity modification, and anti-inflammatories if able to take them." Later in a second report addressed to the respondent's attorney, Doctor Kelley referred to the opinion by Doctor Seales that provided "It is within a certain degree of medical certainty that at least 51% of the claimant's current symptoms are directly related to the work injury". Doctor Kelley opined that "Doctor Seale's notes confirm that her problems are pre-existing and there is no evidence of acute injury." He opined that "it would be difficult to associate the back pain/complaints with the injury since the findings appeared to be pre-existing."

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).

An injury for which the claimant seeks benefits must be established by medical evidence supported by objective findings which 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 clearly provide that the claimant was suffering from issues with her back such as stenosis and degeneration which are not uncommon for someone sixty plus (60+) years old at the time of the work-related accident. There is no medical of record to show that the claimant had a history of back pain or problems that required her to seek medical care for her back prior to the April 2, 2017, accident, and the claimant's testimony corresponded with this. Under Arkansas workers' compensation law, it is clear an employer takes the employee as it finds her and employment circumstances that aggravate pre-existing conditions are compensable. *Heritage Baptist Temple v. Robinson*, 82 Ark. App. 460, 120 S.W.3d 150 (2003).

Further, a claimant is not required in every case to establish the casual connection between a work-related incident and an injury with an expert medical opinion. See, *Wal-mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999). Arkansas courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other reasonable

explanation for the injury. *Hail v. Pitman Construction Co*. 235 Ark. 104, 357 A.W.2d 263 (1962)

Here the medical opinion issued by Doctor Seale, one of the treating doctors, corresponds with opinions by other treating doctors. The medical opinion issued by Doctor Kelley, who had minimal contacts with the claimant, reached a different conclusion. The Commission has the duty of weighing medical evidence, with the resolution of conflicting evidence a question of fact for the Commission. It is well settled that the Commission has the authority to accept or reject medical opinion and the authority to determine its medical soundness and probative force. Based upon the above, there is no alternative but to find that the opinion issued by the treating physician, Doctor Seale, is in fact controlling, and that consequently, the lower back problems are the result of the work-related incident. A compensable injury is one that was the result of an accident that arose in the course of her 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 satisfied the required burden of proof to show that her lower back injury is in fact work-related and the result of the incident on April 2, 2017.

In regard to the medical, the Arkansas Compensation Act also 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). The employee has the burden of proving, by a preponderance of the evidence, that medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W. 3d 445 (2005). Preponderance of the evidence

means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co*., 81 Ark App. 263, 101 S.W.3d 252 (2003). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 750 (1984). In the present matter, there is no alternative but to find that the claimant has satisfied the required burden of proof that she is entitled to reasonable and necessary medical treatment for her lower back injury which would include the minimally invasive left laminectomy at L3-4 and L4-5.

Based upon the evidence available, and after weighing the evidence impartially, without giving the benefit of the doubt to either party, it is found that the claimant has satisfied the burden of proof to show that she suffered a compensable work-related injury to her lower back on April 2, 2017, and that she is entitled to reasonable and necessary medical which would include the minimally invasive left laminectomy at L3-4 and L4-5.

The claimant and her attorney are entitled to the appropriate legal fees as spelled out in Ark. Code Ann. §11-9-715.

This Award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

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JAMES D. KENNEDY
Administrative Law Judge