NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H010320

GLENN CARTER, EMPLOYEE — CLAIMANT

GEA NORTH AMERICA, INC., EMPLOYER — RESPONDENT

SENTRY INSURANCE COMPANY,
INSURANCE CARRIER/TPA — RESPONDENT

OPINION FILED JANUARY 25, 2022

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

Claimant represented by the HONORABLE MATTHEW J. KETCHAM, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE JARROD S. PARRISH, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed September 29, 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 a pre-hearing conference conducted on June 9, 2021 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. The parties' stipulation that respondent paid temporary total disability benefits and medical benefits through March 22, 2021 is also hereby accepted as fact.

3. Claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his low back on November 24, 2020.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's 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 September 29, 2021 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 the claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his low back on November 24, 2020.

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. 2002), 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).

The claimant's low back injury meets the requirements for establishing compensability. The claimant sustained an injury while performing employment services on November 24, 2020. There were objective findings of the injury in the form of muscle spasms documented in

the Mercy Hospital Emergency Department's December 5, 2020 records, a disc bulge at the L3-L4 level, and an annular disc bulge at the L4-L5 level as shown on an MRI taken on February 3, 2021. In addition, this injury required medical treatment in the form of prescription medication, physical therapy, a TFESI, and an L3/4/5 fusion.

The prevailing issue in this matter is whether the claimant's injury was caused by his workplace incident. It is undisputed that 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 evidence preponderates that the claimant's low back condition worsened after his workplace accident. Shortly after the accident, the claimant's low back pain increased, and he had the additional symptom

of left leg radiculopathy to his toes. The claimant testified that he had never experienced this symptom prior to his work accident. Additionally, the claimant's back condition did not warrant surgical intervention prior to the accident; however, after his work accident, the claimant underwent surgery.

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

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

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M. Scott Willhite, Commissioner