BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G702278

FRANCINE CHANCE, EMPLOYEE	CLAIMANT
LOWE'S HOME CENTERS, LLC, EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED AUGUST 22, 2022

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

Claimant represented by the HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE RANDY P. MURPHY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed March 29, 2022. The administrative law judge found that the claimant proved she sustained a compensable injury to her back. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. The Full Commission finds that the claimant did not prove by a preponderance of the evidence that she sustained a compensable injury to her back.

I. HISTORY

The testimony of the claimant, now age 67, indicated that she became employed with the respondents in about 2011. The parties stipulated that the employer-employee relationship existed on April 2, 2017. The claimant testified on direct examination:

> Q. Tell us what happened on April 2 of 2017.
> A. April 2nd it was 10 minutes of 8:00 and they called for a Code 50, which means they need help. So I ran down there, I had my department already taken care of, so I ran down there to help them, and there was this metal pallet that people carried their wood and stuff with, and it was stacked full of OSB. So me and this other guy, we were trying to push it out to the truck to unload it when the OSB took off.
> Q. It slid?
> A. Slid, yeah. And when it did, I was in the middle of the cart, and that's when the cart hit me. And they said, I don't know, but they said it threw me back about 30 feet in the air when that cart hit me, and that's what did that (indicating leg), and when I hit on the concrete ground I landed on my backside.

The parties stipulated that the claimant "initially sustained a compensable work-related injury to her left knee" on April 2, 2017. According to the record, the claimant received emergency treatment from Dr. James R. Arnold on April 2, 2017:

> The patient presents today with reports of pain over her left knee. She reports she caught her [knee] between the wound material and a metal cart. She reports acute onset of left knee pain. She reports abrasion to the right leg….She denies head injury. She denies neck pain. She denies chest pain or abdominal pain. She reports the pain is more prominent with movement….

The Review of Systems indicated, "Negative for back pain, joint swelling and neck pain." Dr. Arnold diagnosed "Abrasion, right lower leg,

initial encounter," "Acute pain of left knee," and "Tibial plateau fracture, left, closed, initial encounter."

A CT of the claimant's left knee was taken on April 2, 2017 with the impression, "Complex impacted lateral tibial plateau fracture with extension into the medial tibial plateau as well. Large lipohernathrosis." Dr. Michael Weber noted on April 3, 2017: "This is a 62-year-old woman who fell yesterday injuring her left knee. She was brought to the Emergency Room here where she was found to have a deeply depressed lateral tibial plateau fracture, which was scanned and a CT scanner for preoperative planning."

Dr. Weber performed an "Open reduction and internal fixation of left lateral tibial plateau" on April 3, 2017. The pre- and post-operative diagnosis was "Depressed lateral tibial plateau fracture on the left." The claimant was provided follow-up treatment after surgery.

An MRI of the claimant's left knee was taken on August 3, 2017 with the following impression:

1. Findings suggesting anterior horn lateral meniscal degeneration or tear with characterization severely limited by artifact.
2. Quadriceps tendon attachment tendinosis. Versus low-grade intrasubstance tear.

Dr. Weber performed a second surgery on August 21, 2017: "Arthroscopy of the left knee with partial lateral meniscectomy." The pre-operative diagnosis was "Internal derangement of the left knee." The post-

operative diagnosis was "1. Torn lateral meniscus, left knee. 2. Osteoarthritis, left knee."

Dr. Weber reported on August 29, 2017, "The patient is a week out on [an] arthroscopic partial lateral meniscectomy on the left. She had the lateral tibial plateau fracture in April. We found that the lateral meniscus was torn and removed all of the torn tissue." Dr. Weber assessed "1 week follow-up of an arthroscopic partial lateral meniscectomy on the left."

Dr. Weber performed a third procedure on January 10, 2018: "Hardware removal, left proximal tibia and total knee arthroplasty." The pre- and post-operative diagnosis was "Posttraumatic osteoarthritis of the left knee." Dr. Weber provided follow-up treatment, and he reported on March 13, 2018:

> The patient returns now about 8 weeks out on her left total knee arthroplasty. [She] continues to hurt her on MRSA fully. She can walk on it but after walking on it for 2 hours or so the pain is excruciating and all she can do [is] lie down with ice on her knee….
> I have told her that her pain is out of proportion with the physical and x-ray findings. By 8 weeks she should be relatively pain free.

Dr. Weber planned a triple-phase bone scan. A Nuclear Medicine Bone Scan 3 Phase was taken on April 2, 2018 with the impression, "Delayed phase periprosthetic foot activity left and right side. No increased blood flow. Atypical RSD would be in the differential. Left knee

replacement with expected moderate periprosthetic activity. Degenerative uptake."

Dr. Weber reported on April 3, 2018: "This patient returns having had the triple phase bone scan. They feel it is compatible with an atypical RSD but it is not classic. She continues to have almost unbearable pain out of proportion with any of her physical findings or surgery." Dr. Weber assessed, "I have told her that this must be in some way related to RSD….My recommendation is to send her to our pain doctors for lumbar sympathetic blocks and appropriate therapy."

Pursuant to Dr. Webber's referral, the claimant began treating at Arkansas Spine and Pain on June 6, 2018. Dr. Amir Qureshi reported at that time, "The patient complains of pain in the Left Knee, Lt leg, neck, lower back. She reports sudden onset of pain. The patient describes her pain as constant." Dr. Qureshi assessed "Chronic pain disorder" and began treating the claimant with lumbar sympathetic blocks.

The claimant followed up with Dr. Weber on September 13, 2018:

> This patient is now about 9 months out on a left total knee arthroplasty that was done for a poor result after a lateral tibial plateau fracture. After the knee replacements she was having more pain than ever before and it seemed atypical and out of proportion with her physical findings. We ended up doing a triple phase bone scan which was compatible with but not diagnostic of RSD. We have had a very difficult time getting her into our pain doctors for lumbar sympathetic blocks. She ended up at Arkansas spine pain and we do not know what they have done with her over there. She tells me she has had

> 2 shots one of which had no effect [and] the other that lasted for 2 or 3 weeks. In addition they are talking about putting a spinal cord stimulator in her back now. She is not happy…. New x-rays of the left knee were ordered today. 2 views were obtained. They [show] components to be in perfect position with no sign of loosening breakage or asymmetric wear.

Dr. Weber assessed "9 month follow-up of a left total knee arthroplasty complicated by probable reflex sympathetic dystrophy….I have told her that we will try and contact her caseworker to make up and find out what is going on at the pain clinic and find out if she could be transferred to another pain clinic. We also want her to return in January for [an] x-ray of her left knee."

Dr. Weber noted on November 20, 2018, "As of today she continues to have substantial pain in her knee with inability to do her activities of daily living without increasing her pain and requiring prolonged periods of rest." Dr. Weber assessed "11 month follow-up of a left total knee arthroplasty with severe pain and no obvious cause. I still think that chronic regional pain syndrome could account for this….We will see if she cannot have 1 or 2 more lumbar sympathetic blocks to see if it would help her."

Dr. Weber reported on January 15, 2019, "The patient is here for a one-year follow-up of the left knee arthroplasty done for trauma and complicated by what we felt was reflex sympathetic dystrophy. She was not helped by conventional treatment although she did have a full complement of injections. A friend of hers gave her some gabapentin which she said

was definitely helpful for her." Dr. Weber assessed "1 year Follow-up of a left total knee arthroplasty complicated by reflex sympathetic dystrophy….Her attorneys are trying to get her back in with the pain clinic for more injections."

Dr. D. Gordon Newbern reported on February 1, 2019:

> Ms. Francine Chance is seen for an Independent Medical Evaluation of her painful left leg and knee replacement.
> She originally suffered a work-related injury on 04/02/2017. Some boards came off of a [lumber] cart which caused the cart to be thrown into her knee where she works at Lowe's Hardware and Home Improvement. She suffered a lateral tibial plateau fracture and this was treated surgically with fixation by Dr. Michael Weber on 04/03/2017….After healing she was continuing to have troubles and ultimately had arthroscopy 4-1/2 months later on 08/21/2017 where posttraumatic osteoarthritis in the lateral compartment with star-shaped irregularity to the lateral tibial plateau surface was noted as well as tearing of the anterior and middle one-third portions of the lateral meniscus. These torn portions were trimmed away….
> After her surgery she had extensive physical therapy but still had a considerable amount of pain….Unfortunately after the knee replacement she has continued to not do well and has worsened….
> She had intervention for regional pain syndrome or RSD with first lumbar sympathetic block on 06/13/2018, 5 months after her knee replacement. This gave her 17 days of partial relief of pain, relieving lateral knee pain and leg pain but not the medial knee pain. Almost 2 months later she had the second block on 08/08/2018 with good relief of the entire leg pain, which lasted about 3-4 weeks. For some reason a third block was never performed or approved….
> ASSESSMENT: She is 21 months post injury and 1 year post left total knee replacement and clinically appears to have Complex Regional Pain Syndrome affecting her left knee and leg. Physical therapy alone has not given her good, successful relief of pain [though] she has regained fairly good

> motion. The lumbar sympathetic blocks gave her promising relief but this did not seem to be pursued aggressively or with any frequency.
> I believe there will be some degree of permanent disability with this injury; however, I really am hopeful for her that her treatment is incomplete and that she will be able to improve to a significant point where she can reach a better, stable plateau and obtain an accurate rating at that time.
> At this time I do not think that she is capable of any gainful employment with the significant degree of pain that she is having. Instead she just needs to try to aggressively treat her chronic regional pain syndrome. Hopefully within 2-3 months one could see some substantial improvement if she is getting traction with aggressive sympathetic blocks and management of the regional pain syndrome.
> PLAN: My recommendation would be to have her pursue aggressive evaluation and treatment with Southern Regional Anesthesia Consultants (SRAC) because I am familiar with them and their work, or Dr. Carlos Roman and to have pre-approval for several lumbar sympathetic blocks on the left side to try to get this process controlled and improved. She may require additional blocks. Unfortunately this problem is best treated early and aggressively and further out from the onset makes it harder to get resolution of symptoms but I would still be hopeful that her symptoms could be made considerably better with aggressive treatment.
> The above represents my opinion based within a reasonable degree of medical certainty.

Pursuant to Dr. Weber's referral, the claimant received periodic injections at Arkansas Specialty Surgery Center with Dr. Gary Frankowski beginning April 24, 2019. The claimant also treated with Dr. Brent Walker at Arkansas Specialty Surgery Center. Dr. Walker signed the following note dated November 27, 2019:

> Ms. Chance presents today for follow-up. She had a lumber cart fall on her. She broke her leg and hurt her tailbone. She had a lumbar sympathetic block. She said she did get some

> relief from it. Those blocks seem to be helping. She had one or two days that the pain was significantly improved and then it came back. She is using her walker today.
> She has been approved for an MRI. She said that she has numbness of her left toes and some in her left leg. Since [she] was thrown in the air and landed on her tailbone, she is concerned that there is possibly something with her spine that could be causing the numbness. She also has swelling and discoloration which goes along with her reflex sympathetic dystrophy….
> We will schedule Ms. Chance for another series of lumbar sympathetic injections since they are helping. We will continue until we get great improvement of that left leg.

An MRI of the claimant's lumbar spine was taken on November 29, 2019 with the following impression:

1. Multilevel disc bulges with facet hypertrophy and prominence of the posterior epidural fat resulting in varying degrees of spinal canal and neural foraminal narrowing as above.
2. Spinal canal narrowing is most severe at L3-L4 and L4-L5 with AP thecal sac diameter of 5 mm.
3. Central/right paracentral disc herniation at L5-S1 contacts the descending S1 nerve roots, right greater than left.
4. Colonic diverticulosis.

Dr. Owen L. Kelly reviewed the medical records and provided an Opinion/Summary on May 17, 2020:

> The claimant, Ms. Chance, sustained a lateral tibial plateau fracture on the job and eventually underwent total knee arthroplasty. 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 over 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.
> A final rating at this time should be completed based on AMA guidelines.

Dr. Kelly assessed "Work related knee injury."

Dr. Jared Seale provided an assessment and plan on July 13, 2020:

> 65-year-old female status post a work-related injury on 4/2/2017. She was struck by [a] "cart." She sustained a severe trauma to the left knee that has required a large reconstructive surgery.
> Ever since the surgery she has had low back pain that radiates down the left leg to the top of the foot. She also has severe right-sided back pain. She has been diagnosed with severe stenosis at L3-4 and L4-5 and referred to me.
> She has had thorough physical therapy which was concentrated around the knee. She has had multiple injections in the low back with minimal long-term success.
> She states her pain is severe.
> She reports that she has no history of low back issues prior to her work injury. She reports having no treatment for any low back issues at least up to 10 years prior to her work injury….
> AP and lateral x-ray of the lumbar spine ordered, obtained, and interpreted today reveals no spondylolisthesis. Normal lordosis. Facet arthropathy noted on AP x-ray. Mild leg length discrepancy with compensatory scoliosis.
> MRI of the lumbar spine reviewed on disc today from January 2019 reveals mild to moderate central stenosis and lateral recess stenosis at L3-4 with moderate central stenosis and moderate to severe lateral recess stenosis bilaterally at L4-5. Diffuse degeneration….
> Patient has significant stenosis and subjective complaints of symptoms that match this more on the left side. We discussed today that a lot of her pain could be due to the asymmetric gait and favoring the left knee. However given the significant stenosis I do believe that decompression is warranted. I do believe there is a good chance he could help

> her. She understands that it most likely will not help the left knee pain.
> The patient is requesting surgical intervention….
> The patient's MRI does not show fracture or disc protrusion. There are signs of degeneration and stenosis which is pre-existing. There are no objective findings of acute injury. However, the patient's symptoms began on and after the work injury. The patient has 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 51% of the patient's current symptoms are directly related to their work injury.

Dr. Seale assessed "Moderate stenosis, central, L3-4 and L4-5 with neurogenic claudication worse on the left. Severe trauma status post reconstruction, left knee." Dr. Seale planned "Minimally invasive laminectomy, left, L3-4 and L4-5."

Dr. Kelly corresponded with the respondents' attorney on August 4, 2020:

> I received your correspondence on 8/3/2020 regarding the above case. I have reviewed the additional records per Dr. Seale. There is a clinic encounter date of 7/13/20 where the claimant is seen for a lower back/lumbar spine problem. It is noted in his discussion that the claimant's "MRI does not show a fracture or disc protrusion. There are signs of degeneration, stenosis which is pre-existing. There are no objective findings of acute injury; however, the claimant's symptoms began on and after the work injury. The claimant has no history of low back pain or down the leg prior to the work injury. Therefore 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."
> I have also noted the notation regarding a final rating on the knee replacement.
> SUMMARY: 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.
> Concerning the knee and the rating, the AMA Guidelines are based on exam findings including motion and stability page 88 table 66. It does not appear per the records that motion and instability are issues. I would opine that she has a fair result resulting in a 20% whole person, 50% lower extremity rating. If an in person exam is needed for complete evaluation, I would be happy to see her at your office to do the measurements.

A pre-hearing order was filed on November 2, 2021. The claimant contended, "Claimant contends that admitted compensable injuries were sustained 4/2/17. Respondents discontinued temporary total disability benefits 5/20/20. Claimant contends entitlement to temporary total disability benefits beginning with the date of last payment of benefits and continuing through at least 8/4/20. Claimant also contends entitlement to benefits in association with a 50% impairment to the lower extremity. These benefits have been controverted for purposes of attorney's fees. Claimant reserves the right to pursue other benefits to which claimant may become entitled in the future. Claimant's attorney respectfully requests that any attorney's fees owed by claimant on controverted benefits by award or otherwise be deducted from claimant's benefits and paid directly to claimant's attorney by separate check, and that any Commission Order direct the respondent to make payment of attorney's fees in this manner."

The parties stipulated that the respondents "have paid medical and TTD benefits in regard to the left knee injury." The respondents contended, "Respondents contend that claimant is receiving appropriate benefits for her knee injury. Respondents contend that the claimant's current back problems are not related to the compensable knee injury."

The text of the pre-hearing order indicated that the parties agreed to litigate the following issues:

1. Compensability of lower back injury.
2. Appropriate medical.
3. Attorney's fees.
4. All other issues are reserved.

A hearing was held on January 18, 2022. At that time, counsel for the respondents stated that they had paid a 50% permanent anatomical impairment to the claimant's left knee. The claimant testified that her physical condition was worsening and that she wanted to undergo back surgery recommended by Dr. Seale.

An administrative law judge filed an opinion on March 29, 2022. The administrative law judge found, among other things, that the claimant proved she sustained a compensable injury to her back. The respondents appeal to the Full Commission.

II. ADJUDICATION

A. Compensability

Ark. Code Ann. §11-9-102(4)(Repl. 2012) provides, in pertinent part:

> (A) "Compensable injury" means:
> (i) An accidental injury causing internal or external physical harm to the body … arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2012). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012).

An aggravation of a preexisting noncompensable condition by a compensable injury is, itself, compensable. *Oliver v. Guardsmark, Inc.*, 68 Ark. App. 24, 3 S.W.3d 336 (1999). An aggravation is a new injury resulting from an independent incident. *Maverick Transp. v. Buzzard*, 69 Ark. App. 128, 10 S.W.3d 467 (2000). An aggravation, being a new injury with an independent cause, must meet the definition of a compensable injury in order to establish compensability for the aggravation. *Heritage Baptist Temple v. Robison*, 82 Ark. App. 460, 120 S.W.3d 150 (2003), citing *Farmland Ins. Co. v. DuBois*, 54 Ark. App. 141, 923 S.W.2d 883 (1996).

The claimant has the burden of proving by a preponderance of the evidence that she sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Repl. 2012). 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. 269, 101 S.W.3d 252 (2003).

An administrative law judge found in the present matter, "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." The Full Commission does not affirm this finding.

The parties stipulated that the employer-employee relationship existed on April 2, 2017. The claimant testified that a load of boards slipped from a pallet and struck her. The record does not corroborate the claimant's testimony that she was thrown "30 feet into the air." The parties stipulated that the claimant sustained a compensable injury to her left knee on April 2, 2017 as a result of the pallet incident. Dr. Arnold noted on April 2, 2017, "The patient presents today with reports of pain over her left knee." Dr. Arnold specifically noted that the claimant's history at that time was "Negative for back pain[.]" There is no evidence of record demonstrating that the claimant injured her back as a result of the April 2, 2017 specific incident. Dr. Weber performed left knee surgery on April 3, 2017 and August 21, 2017. Dr. Weber then performed a total knee arthroplasty on January 10, 2018. Dr. Qureshi reported on June 6, 2018 that the claimant complained of "lower back" pain. However, Dr. Qureshi's report of back

pain on June 6, 2018 is not probative evidence demonstrating that the claimant sustained a compensable back injury on April 2, 2017.

Dr. Newbern provided an Independent Medical Evaluation on February 1, 2019 and noted that the claimant had injured her left knee on April 2, 2017. Dr. Newbern correctly noted that the claimant had suffered from chronic pain since the April 2, 2017 compensable injury to the claimant's knee, but he did not conclude that the claimant had also sustained a back injury. Dr. Walker reported on November 27, 2019 that the claimant "broke her leg and hurt her tailbone" in the April 2, 2017 accidental injury. The Commission has the authority to accept or reject a medical opinion and the authority to determine its medical soundness and probative force. *Green Bay Packaging v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 692 (1999). In the present matter, there is no probative evidence of record supporting Dr. Walker's statement that the claimant "hurt her tailbone" on April 2, 2017. Dr. Walker's notation in this regard is entitled to no evidentiary weight. Nor does the record support Dr. Seale's conclusion on July 13, 2020 with regard to the claimant's back pain, "Therefore it is within a certain degree of medical certainty that at least 51% of the patient's current symptoms are directly related to [her] work injury."

It is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg.*

v. Baker, 337 Ark. 94, 989 S.W.2d 151 (1999). On August 4, 2020 Dr. Kelly stated, "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." The Full Commission finds in the present matter that Dr. Kelly's opinion is corroborated by the record and is entitled to significant evidentiary weight.

The Full Commission finds in the present matter that the claimant did not prove by a preponderance of the evidence that she sustained a "compensable injury" to her back. The claimant did not prove that she sustained an accidental injury causing internal or external physical harm to her back. The claimant did not prove that she sustained an injury to her back which arose out of and in the course of employment, required medical services, or resulted in disability. The claimant did not prove that she sustained an injury to her back which was caused by a specific incident or was identifiable by time and place of occurrence on April 2, 2017 or any other date. Additionally, the claimant did not establish a compensable injury to her back by medical evidence supported by objective findings. The claimant did not prove that the abnormalities shown on the November 29, 2019 MRI or subsequent diagnostic testing were causally related to the April 2, 2017 stipulated compensable injury to the claimant's left knee. Nor did the claimant prove that she sustained a compensable "aggravation" of a

pre-existing degenerative condition in accordance with *Heritage Baptist Temple, supra*.

B. Compensable Consequence

When the primary injury is shown to have arisen out of and in the course of employment, the employer is responsible for any natural consequence that flows from that injury. *Nichols v. Omaha Sch. Dist.*, 2010 Ark. App. 194, 374 S.W.3d 148. The basic test is whether there is a causal connection between the injury and the consequences of such. *Id*. The burden is on the employee to establish the necessary causal connection. *Id*. Whether there is a causal connection is a question of fact for the Commission. *Jeter v. B.R. McGinty Mechanical*, 62 Ark. App. 53, 968 S.W.2d 645 (1998).

The administrative law judge's pre-hearing order indicated in the present matter, "Claimant contends that admitted compensable injuries were sustained April 2, 2017, to the left lower extremity, and the resulting altered gait led to claimant's lower back injury." The Full Commission finds that the claimant did not prove her low back condition was causally related to "altered gait" related to the compensable injury to the claimant's left knee. The Full Commission has determined that the claimant did not prove she sustained a compensable injury to her back on April 2, 2017. Dr. Newbern reported on February 1, 2019, "She is 21 months post injury and 1 year

post left total knee replacement and clinically appears to have Complex Regional Pain Syndrome affecting her left knee and leg." Dr. Newbern did not opine that the claimant had sustained an injury to her back as a result of the left knee injury. Nor does the record demonstrate that "multilevel disc bulging" reported on the November 29, 2019 MRI was causally related to "altered gait." Dr. Kelly opined on May 17, 2020 that the claimant should receive a permanent impairment rating related to the compensable knee injury. Dr. Kelly did not opine that the claimant had also sustained a compensable back condition which was causally related to the compensable knee injury. The Full Commission finds that Dr. Kelly's opinions on May 17, 2020 and August 4, 2020 were corroborated by the record and are entitled to significant evidentiary weight. *See Minnesota Mining & Mfg., supra*. The claimant in the present matter did not prove that her back condition was a natural consequence of the April 2, 2017 compensable injury to her left knee.

After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's finding that the claimant proved she sustained a compensable injury to her back on April 2, 2017. The Full Commission finds that the claimant did not prove she sustained a compensable injury to her back. We also find that the claimant did not prove her back condition was a "natural consequence" or was otherwise

causally related to the April 2, 2017 compensable injury to her claimant's left knee. The claim for benefits related to the claimant's low back is respectfully dismissed.

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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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 did not prove by a preponderance of the evidence that she sustained a compensable injury to her back.

When the primary injury is shown to have arisen out of and in the course of employment, the employer is responsible for any natural consequence that flows from that injury; the basic test is whether there is a causal connection between the two episodes. *See generally Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001); *Air Compressor Equipment v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000); *Jeter v. B.R. McGinty Mech.*, 62 Ark. App. 53, 968 S.W.2d 645 (1998).

The case at bar is analogous to *Ryburn Motor Co. v. Atkins*, 2014 Ark. App. 114, 2014 Ark. App. LEXIS 151, 2014 WL 580123 (Ark. Ct. App. 2014). In *Ryburn* the claimant suffered compensable injuries to his left knee, left hip and left arm. In affirming the Commission's decision, the Court of Appeals held:

> The Commission found that Atkins's right-hip injury was a compensable consequence of his left-knee injury resulting from his work accident. When the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment, unless it is the result of an independent intervening cause. *Jim Walter Homes v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (2003). Here, there was evidence that Atkins's left knee was seriously hurt in the accident, and after treatment, he began using a cane or a walker. This caused right-hip pain. Atkins testified that his right-hip condition grew progressively worse over time, and his testimony was supported by [3] notations of an altered gait caused by his left-knee injury in his medical records. Atkins also testified that he had no physical restrictions or work absences for his knee or hip prior to this accident at work. We hold that substantial evidence supports the decision that Atkins suffered a compensable consequence injury to his right hip.

Here, as in *Ryburn*, the claimant had a severe left knee injury that eventually required a left knee total arthroplasty. Following three surgeries, the claimant experienced an asymmetric gait and began favoring her left knee. This change in gait caused the claimant to begin experiencing low

back pain that "radiates down the left leg to the top of the foot". Also, the claimant had no physical restrictions or work absences for her low back condition prior to his accident.

Additionally, Dr. Jared Seale opined that the claimant's back condition was causally connected to her work injury. Dr. Seale's July 13, 2020, report reads, in relevant part:

> She reports that she has no history of low back issues prior to her work injury. She reports having no treatment for any low back issues at least up to 10 years prior to her work injury.
>
> …
>
> The patient's MRI does not show fracture or disc protrusion. There are signs of degeneration and stenosis which is pre-existing. There are no objective findings of acute injury. However, the patient's symptoms began on and after the work injury. The patient has no history of pain in the low back or down the leg prior to the work injury. Therefore, it is within a certain [sic] degree of medical certainty that at least 51% of the patient's current symptoms are directly related to their work injury[.]

Based on Dr. Seale's assessment of the claimant's condition, he has recommended that she undergo a "minimally invasive laminotomy, left, L4-5".

It is undisputed that the claimant had a pre-existing degenerative back condition. Although the claimant's condition was pre-existing, the

condition was asymptomatic prior to her work accident. It is well established that 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 her. *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.

In the present case, the claimant's work injury clearly aggravated the claimant's degenerative back condition. Thus, I find that the medical treatment recommended by Dr. Seale for the claimant's back injury is reasonable and necessary and causally connected to the claimant's workplace accident.

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

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M. SCOTT WILLHITE, Commissioner