

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H301483**

ELIAS CHAVEZ, EMPLOYEE

CLAIMANT

**THOMPSON CONSTRUCTION GROUP, INC.,
EMPLOYER**

RESPONDENT

**ZURICH AMERICAN INSURANCE CO.,
CARRIER**

RESPONDENT

OPINION FILED NOVEMBER 29, 2023

Hearing before Administrative Law Judge Steven Porch on October 6, 2023, in Marion, Arkansas.

Claimant was represented by Mr. Tanner Thomas, Attorney at Law, Little Rock, Arkansas.

Respondents were represented by Mr. Jarrod Parrish, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A full hearing was held on this claim on October 6, 2023. Claimant was represented by Mr. Tanner Thomas, Attorney at Law, Little Rock, Arkansas; Respondents were represented by Mr. Jarrod Parrish, Attorney at Law, Little Rock, Arkansas.

STIPULATIONS

By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. An employer/employee/carrier relationship existed among the parties on September 9, 2022, when Claimant allegedly sustained compensable injuries to his left hip.
3. Respondents initially accepted this claim as medical-only and paid some benefits¹.

¹ Respondents denied compensability of the hip by letter dated September 29, 2023. This is in evidence as Respondents Exhibit 3.

4. The parties will stipulate to Claimant's average weekly wage and compensation rates on or before the hearing date.²

ISSUES

The parties have identified the following issues to be adjudicated:

1. Whether Claimant sustained a compensable injury to his left hip.
2. Whether Claimant is entitled to any additional reasonable and necessary medical treatment rendered after January of 2023.
3. Whether Claimant is entitled to additional temporary total disability benefits from September 9, 2022, to a date yet to be determined.
4. Whether Claimant is entitled to an impairment rating and permanent partial disability benefits.
5. Whether Claimant is entitled to a controverted attorney's fee.

All other issues are reserved.

CONTENTIONS

Claimant's Contentions: On September 9, 2022, Claimant, in the course and scope of employment with the respondent-employer, was carrying a rail when he fell from an elevated section of the construction site, sustaining a left hip injury.

The Respondent took two months of the Claimant complaining about pain to send him to a doctor, but initially accepted the injury as compensable. Claimant initially was provided treatment from Dr. Sherita Willis, where his complaints were of left hip and low back pain. Claimant was allowed to return to Dr. Willis in January of 2023, where she cited that the Claimant's complaints of pain were chronic in nature. Respondents then

² The Claimant and the Respondent did not stipulate to the average weekly wage and compensation rates at the full hearing. Both parties verbally assured the Commission that they can stipulate to the compensation rates should an award for indemnity benefits be granted.

denied his claim.

Claimant was then forced to treat on his own and went to Dr. Rickey Carson, where he complained of low back and left hip pain and was referred to Dr. John Rocco Rodney. Claimant underwent an MRI which revealed tears of his bilateral hamstring tendons, the left gluteus minimus and medius tendons, and at the right insertion of the gluteus medius tendons.

Claimant contends that he suffered a compensable injury at work, that he is entitled to temporary total disability and medical benefits, and that his attorney is entitled to an attorney's fee. All other issues are reserved.

Respondent's Contentions: Respondents contend that they had accepted this claim as medical-only. The Claimant continued to work for Respondent/Employer through March 19, 2023, when he was terminated, as is evidenced by the attached wage information. The medical documentation does not support an off-work status beyond that. In light of this, it is Respondents' position Claimant is not entitled to temporary total disability benefits. Additionally, the medical records indicate the Claimant does not have any acute objective findings to support an injury on September 9, 2022. The Claimant has received unauthorized medical treatment with Drs. Rodney and Carson.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, non-medical documents, post hearing briefs from the parties, and other matters properly before the Commission, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. The stipulations set forth above are reasonable and are hereby accepted.
3. The Claimant has proven by the preponderance of the evidence that he sustained a compensable injury to his left hip on September 9, 2022.
4. The Claimant has proven by the preponderance of the evidence that he is entitled to additional reasonable and necessary medical treatment.
5. The Claimant has not proven by the preponderance of the evidence that he is entitled to temporary total disability benefits following his September 9, 2022, injury.
6. The Claimant has not proven by the preponderance of the evidence that he is entitled to an impairment rating and permanent partial disability benefits.
7. Claimant has not proven by the preponderance of the evidence that his attorney is entitled to a controverted attorney's fee.

CASE IN CHIEF

Summary of Evidence

The sole witness at the hearing was the Claimant, Elias Chavez. The witness had the benefit of an interpreter to translate the proceedings from English to Spanish. In addition to admitting the pre-hearing order and Claimant's and Respondents' post-hearing briefs regarding this matter, I also have admitted the following into evidence in this case: Claimant's Exhibit 1, a comprehensive exhibit containing 67 pages of medical records, Respondents' Exhibit 1, a 51-page compilation of medical records; Respondents' Exhibit 2, a 16 page non-medical document; and Respondents' Exhibit 3, a 1 page letter dated September 29, 2023.

Claimant was a rod buster for the Respondent/Employer. A rod buster is one who constructs concrete foundations at construction sites. Claimant slipped on some mud on the ground and fell while carrying rebar, injuring the left side of his hip on September 9, 2022. This occurred during the course and scope of his employment. The Claimant

reported this incident the same day and was sent home. The Claimant did not receive medical treatment for his injury until November 22, 2022, 74 days after the incident. Dr. Sherita Willis noted that the Claimant had left hip tenderness, limited range of motion, and prescribed him Tylenol and Ibuprofen for his injury. The Claimant was later ordered an MRI by Dr. John Rocco Rodney. The Claimant received an MRI on March 27, 2023, in Baltimore, Maryland. The physicians at Community Radiology Associates found a "...2.) Low-grade partial- thickness tears at the origins of bilateral hamstring tendons, 3.) Low- grade partial- thickness tears at the insertions of the left gluteus minimus and medius tendons, 4.) Low-grade partial- thickness tears at insertion of the right gluteus medius tendon." *CL Post Hearing Brief Ex. 4.*

The Respondents initially accepted this claim as a medical-only one and paid some benefits. The Claimant, while receiving these benefits, continued to work for the Respondent/Employer until March 21, 2023. Claimant performed light duty work such as working with equipment that bends rods, cut rods, or manually wrap bands around rods. When these jobs became difficult the Claimant was allowed to pick up scrap. The Claimant continued to get paid his regular wage. The Claimant quit his job on March 21, 2023, because he had unbearable pain. The Claimant moved to Silver Springs, Maryland and was not getting any rehabilitation treatment for his work-related hip injury. The reason for not getting continued rehab treatment for his hip was a lack of insurance. The Claimant was questioned as to why he did not request workers compensation to pay for his rehabilitation. Claimant stated he signed some papers and returned them to the Respondent or Commission. Since then, he has not heard anything from the Respondent

or the Commission about continued treatment on his hip. Moreover, the Claimant could not state what papers he signed nor when they were sent.

On June 2, 2023, the Claimant, while walking, was struck on the left side of his hip by an automobile and went to the hospital. Claimant suffered a left leg femur fracture and later needed rehab for his left hip resulting from the vehicle incident. Claimant further testified that he received Maryland state health insurance six weeks before the vehicle incident. No proof was provided proving that Claimant acquired insurance in Maryland. When testifying about his rehabilitation Claimant stated he was getting treatment down the outer side of his left leg for the work-related injury. On the other hand, Claimant stated he was getting rehab treatment down the front of his left leg due to the motor vehicle incident. The Claimant testified that he was getting rehab treatment for his hip a month and a half before the motor vehicle injury. The Claimant testified he was getting rehabilitation treatment for the left hip due to both the work injury and the motor vehicle injury. However, the focus of treatment for each incident were allegedly in different areas of the left hip.

Adjudication

A. Whether Claimant sustained a compensable left hip injury.

Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2012), which I find applies to the analysis of Claimant's alleged injuries, defines "compensable injury":

(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 be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2012). “Objective findings” are those findings that cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16). The element “arising out of . . . [the] employment” relates to the causal connection between the claimant’s injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant’s employment “when a causal connection between work conditions and the injury is apparent to the rational mind.” *Id.*

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

A claimant’s testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness’ credibility and how much weight to accord to that person’s testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

The Claimant has satisfied his burden with objective findings as to his work-related left hip injury on September 9, 2022. The Claimant sustained internal harm to his body. Claimant had an MRI of his left hip in Baltimore, Maryland. The physicians at Community Radiology Associates found a "...2.) Low-grade partial- thickness tears at the origins of bilateral hamstring tendons, 3.) Low- grade partial- thickness tears at the insertions of the left gluteus minimus and medius tendons, 4.) Low-grade partial- thickness tears at insertion of the right gluteus medius tendon." *CL Post Hearing Brief Ex. 4*. I credit the MRI report for Claimant's March 27, 2023, exam date created by the Community Radiology Associates. This injury occurred by specific incident during the scope and course of Claimant's employment when he slipped on some mud on the ground while carrying rebar for the Respondent/Employer. The Claimant also needed medical treatment and received an MRI. Thus, I find by the preponderance of the evidence that the Claimant sustained a compensable left hip injury during the course and scope of his employment on September 9, 2022.

B. Whether Claimant is entitled to any additional reasonable and necessary medical treatment rendered after January of 2023.

Arkansas Code Annotated Section 11-9-508(a) (Repl. 2012) states that an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical treatment is reasonable and

necessary for the treatment of a compensable injury. *Brown, supra; Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001).

As the Arkansas Court of Appeals has held, a claimant may be entitled to additional treatment even after the healing period has ended, if said treatment is geared toward management of the injury. *See Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004); *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983). Such services can include those for the purpose of diagnosing the nature and extent of the compensable injury; reducing or alleviating symptoms resulting from the compensable injury; maintaining the level of healing achieved; or preventing further deterioration of the damage produced by the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995); *Artex, supra*.

The Claimant is entitled to reasonable and necessary medical treatment for his compensable left hip injury. No evidence was presented that shows that Claimant had completed his healing period. I find by the preponderance of the evidence that all the medical treatment paid for by the Respondents for the treatment of Claimant's work-related left hip injury were reasonable and necessary, including the x-rays and an MRI. Claimant testified that he received physical rehabilitation services for his work-related left hip injury in Maryland approximately six weeks before his June 2, 2023, motor vehicle incident. I don't credit this testimony. I don't have any physical therapy records verifying the purpose of this treatment or that the treatment had actually taken place. There is no

reason, and no reason was given why the physical therapy records were not provided to the Respondents and the Commission given this full hearing had taken place months after the alleged treatment. Therefore, I cannot find by the preponderance of the evidence that this treatment was reasonable and necessary. The Claimant has mentioned no other treatment for his left hip work-related injury.

However, regarding additional medical treatment, Respondents have taken the position that Claimant was injured in a subsequent non-work-related motor vehicle incident that occurred on June 2, 2023, and that incident constituted an independent intervening cause, relieving Respondents from further responsibility for the September 9, 2022, incident. In this regard, the pertinent section of the Act provides:

Under this subdivision (4)(F), benefits shall not be payable for a condition which results for a nonwork-related independent intervening cause following a compensable injury which causes or prolongs disability or a need for treatment. A nonwork-related independent intervening cause does not require negligence or recklessness on the part of a claimant.

Ark. Code Ann. § 11-9-102(f)(F)(iii) (Supp. 2011). The test for determining if a subsequent episode is an aggravation or a recurrence is whether the subsequent episode was precipitated by an independent intervening cause or was a natural and probable result of the first injury. *Georgia-Pacific Corp. v. Carter*, 62 Ark. App. 162, 167-68, 969 S.W.2d 677 (1998). The initial question is whether a causal connection between the primary injury and the subsequent disability exists; and provided such a connection is established, there is no independent intervening cause unless the subsequent disability is triggered by activity by the claimant that is unreasonable under the circumstances. *Guidry v. J&R Eads Const. Co.*, 11 Ark. App. 219, 223, 669 S.W.2d 483 (1984). Respondents bear the burden of proving an independent intervening cause by a preponderance of the evidence

under Ark. Code Ann. § 11-9-705(a)(3) (Supp. 2011).

As previously stated, a claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

The Claimant's motor vehicle incident was unrelated to his work. The motor vehicle incident took place a few months after Claimant had voluntarily ended his employment with Respondent/Employer. The motor vehicle incident also occurred in a completely different state, Maryland, than where his work-related injury occurred, Arkansas. The evidence preponderates that Claimant was crossing the street in Maryland and a motorist struck him on the left side of his hip where he previously sustained his compensable left hip work-related injury. This incident resulted in a fracture to Claimant's left femur. It's clear there is no causal connection between the Claimant's work injury and the subsequent motor vehicle incident. Thus, I find Claimant's June 2, 2023, automobile incident as wholly independent of his work-related injury. Based on this finding, I further find by the preponderance of the evidence that the Respondents have proven an independent intervening cause and are no longer responsible for the Claimant's compensable left hip injury after June 2, 2023.

C. Whether Claimant is entitled to temporary total benefits from September 9, 2022, to a date yet to be determined.

Temporary total disability for unscheduled injuries is that period within the healing period in which the Claimant suffers total incapacity to earn wages. *Ark. State Highway and Transportation Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). The Claimant continued to work for the Respondent/Employer until March 21, 2023. The Claimant's attorney stated in his post-hearing brief that Claimant quit his job due to unbearable pain. The Claimant was on light duty when he quit working for the Respondent/Employer and moved to his home state of Maryland. Claimant quit his job voluntarily and without a doctor's orders. I don't credit Claimant's reason for quitting his job due to unbearable pain. This was never brought out in his sworn testimony. Though I find he did voluntarily quit his job, I find that he did so to move to his home state of Maryland. Claimant has the responsibility of proving that he suffered a total incapacity to earn wages. No credible evidence was presented showing that the Claimant had indeed suffered a total incapacity to earn wages due to his work-related injury. Thus, I find that the Claimant did not prove by the preponderance of the evidence that he is entitled to temporary total disability benefits.

D. Whether Claimant is entitled to an impairment rating and permanent partial disability benefits.

I find the same for Claimant's request for permanent partial disability benefits. Permanent impairment, generally a medical condition, is any permanent functional or anatomical loss remaining after the healing period has been reached. *Ouachita Marine*

v. Morrison, 246 Ark. 882, 440 S.W.2d 216 (1969). Pursuant to Ark. Code Ann. § 11-9-522(g) (Repl. 2002), the Commission adopted the Fourth Edition of the AMA Guides as an impairment rating guide. See AWCC R. 099.34. A determination of the existence or extent of physical impairment must be supported by objective and measurable physical or mental findings. Ark. Code Ann. § 11-9-704(c)(1)(B) (Repl. 2012). Permanent benefits are to be awarded only following a determination that the compensable injury is the major cause of the disability or impairment. *Id.* § 11-9-102(F)(ii). “Major cause” is defined as “more than fifty percent (50%) of the cause,” and a finding of major cause must be established by a preponderance of the evidence. *Id.* § 11-9-102(14). Any medical opinion must be stated within a reasonable degree of medical certainty. *Id.* § 11-9-102(16).

Claimant has the responsibility to present to the Commission evidence that Claimant has reached the end of his healing period on his compensable left hip injury. The Claimant has not presented any evidence that Claimant has reached the end of his healing period. Moreover, the Claimant must further present objective and measurable evidence of any permanent functional or anatomical loss remaining after the healing period has been reached. The Claimant has presented no such evidence concerning his left hip compensable injury. Thus, I find that the Claimant did not prove by the preponderance of the evidence that he is entitled to permanent partial disability benefits. Based on the findings of this opinion, I am not awarding any indemnity benefits in this matter thus rendering the issue of an attorney’s fee moot.

CONCLUSION AND AWARD

Respondents are hereby directed to act in accordance with the findings of fact and conclusions of law set forth above.

IT IS SO ORDERED.

Hon. Steven Porch
Administrative Law Judge