

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H106980

TRAVIS EVANS,
EMPLOYEE

CLAIMANT

ARKANSAS DEPARTMENT OF
TRANSPORTATION, EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION,
CARRIER

RESPONDENT

OPINION FILED FEBRUARY 12, 2024

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

Claimant represented by the HONORABLE EDDIE H. WALKER, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE CHARLES H. MCLEMORE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The respondents appeal and the Claimant cross-appeals an opinion and order of the Administrative Law Judge filed May 31, 2023. 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 March 1, 2023 and contained in a pre-hearing order filed that same date are hereby accepted as fact.
2. Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his

lumbar spine on August 18, 2021. Claimant has failed to prove by preponderance of the evidence that he suffered a compensable injury to his pelvis or left hip on August 18, 2021 or that those are compensable consequences of his left leg injury.

3. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with the claimant's lumbar spine injury.
4. Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to temporary total disability benefits beginning October 12, 2022 and continuing through March 27, 2023.
5. Claimant did not fail to give notice of his injury pursuant to A.C.A. §11-9-701.
6. Respondent is entitled to a credit for temporary total disability benefits claimant was paid subsequent to his return to work on December 2, 2021.
7. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's May 31, 2023 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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2012).

For prevailing on this appeal before the Full Commission, claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. § 11-9-715(Repl. 2012). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. § 11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents

DISSENTING OPINION

I respectfully dissent from the Majority's Opinion. In my *de novo* review of the file, I find that the claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable injury to his lumbar spine on August 18, 2021. Thus, the claimant is not entitled to medical treatment or temporary total disability benefits beginning October 12, 2022, and continuing through March 27, 2023, due to the alleged lumbar injury. I also find the claimant failed to give notice of his alleged lumbar injuries pursuant to Ark. Code Ann. §11-9-701.

Generally, a specific incident injury is an accidental injury arising out of the course and scope of employment caused by a specific incident identifiable by time and place of an occurrence. Ark. Code Ann. § 11-9-102(4)(A)(i). This, therefore, requires that a claimant 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 physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury as defined in Ark. Code Ann. §11-9-102(16) and; (4) that the injury was caused by a specific incident identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102(4)(A)(i).

However, a compensable injury may also arise as a compensable, or natural, consequence of a prior specific incident injury. If an injury is

compensable, then every natural consequence of that injury is also compensable. *Martin Charcoal, Inc. v. Britt*, 102 Ark. App. 252, 284 S.W.3d 91 (2008). The basic test is whether there is a causal connection between the two episodes. *Walker v. Fresenius Med. Care Holding, Inc.*, 2014 Ark. App. 322, 436 S.W.3d 164 (2014).

At the May 15, 2023 hearing, the claimant testified that the injuries sustained during his August 2021 fall involved his left leg, stating

I tore the hamstring somewhere up in my hip. It feels like maybe about the center of my backside. It hurts all the way from my belt loop down into the back of my knee and then over the side of my knee. (Hrng. Tr., P. 10).

At the time, this was diagnosed as a left hamstring strain by Dr. Christopher Bell in the emergency room. (Resp. Ex. 1, Pp. 7-12). Later, Dr. Bryan Smith, an orthopedic surgeon with Mercy Clinic in Fort Smith, obtained an MRI of the claimant's left lower extremity, and in a report dated August 26, 2021 opined that the findings were consistent with a complete tear of the biceps femoris tendon. (Resp. Ex. 1, Pp. 16-17). After returning to work, the claimant had a second incident when his left hamstring began to hurt and ". . . the back of my knee just felt like it opened up like there wasn't nothing holding it. It got to hurting and popping." (Hrng. Tr., Pp. 13-14). The claimant believes this incident was a continuation of his initial

August 2021 injury. *Id.* Dr. Smith ordered a repeat MRI on the claimant's left knee which was performed on May 4, 2022 and showed no evidence of internal derangement. (Resp. Ex. 1, Pp. 46-51). After Dr. Smith performed a left knee arthroscopy, anterior compartment fat pad debridement, chondroplasty patella and medial plica excision on May 18, 2022, he recommended that the claimant began treating for his lumbar spine in September 2022 in order to "rule out any compressive lesion that may be contributing to this." (Cl. Ex. 1, P. 22; Resp. Ex. 1, Pp. 54-56).

It is important to note that the claimant did not seek medical treatment for his lumbar spine complaints until September 29, 2022, over a year after his initial injury. An MRI conducted on that date revealed " 1. Mild-moderate degenerative change throughout the lumbar spine. 2. Small broad-based disc protrusion eccentric to the right at L5-S1." (Resp. Ex. 1, P. 66). In March 2023, Dr. William M. Rambo Jr., a neurologist with Mercy Clinic in Fort Smith, opined that the claimant "has been thoroughly evaluated and treated since his work-related injury in 2021. I think his pain is probably multifactorial including hamstring and knee etiologies. Arguing against a radiculopathy is that his pain stops at his knee and his MRI findings are mild and mostly right-sided." (Cl. Ex. 1, P. 39). Dr. Rambo diagnosed the claimant with "[s]pondylosis of lumbar region without myelopathy or radiculopathy" and noted that the claimant's September 2022

MRI revealed “mild to moderate degenerative disc changes at L5-S1 with right lateral recess stenosis possibly due to a calcified disc protrusion.

There is also some lateral recess stenosis which is more mild, at L4-L5 specifically.” (Cl. Ex. 1, P. 38). Dr. Rambo was unwilling to provide the claimant with any disability or work restrictions. (Cl. Ex. 1, P. 39).

From these records and the claimant’s own testimony, it is clear that the claimant’s lumbar spine complaints did not arise as a result of his August 2021 fall. The claimant’s only complaints at that point regarded the area from his “belt loop down into the back of my knee.” None of the claimant’s pain led his treating physicians to believe the source could be anything other than his knee and hamstring until September 19, 2022 at the earliest. The claimant sought no treatment for his lumbar spine until over a year after his injury. There is no evidence, objective or otherwise, that would lead to the conclusion that the claimant’s low back symptoms developed as a result of the August 2021 event.

There is also no evidence that the claimant’s lumbar spine issues resulted as a consequence of his August 2021 fall. The claimant has treated with two physicians, Dr. Smith and Dr. Rambo, regarding his low back and neither stated that the claimant’s condition is at all related to his left knee injury within any degree of medical certainty. In fact, Dr. Rambo determined that the claimant’s spinal condition trends to the right-hand side,

away from the location of the claimant's complaints. Ultimately, the weight of the medical evidence shows that the claimant's back condition is largely degenerative in nature. In fact, each of the conditions Dr. Rambo diagnosed the claimant with were chronic in nature, including spondylosis, right lateral stenosis, and degenerative disc changes. The medical evidence is clear that the claimant's condition is chronic and degenerative rather than being related to his fall on August 18, 2021. For these reasons, the claimant is not entitled to benefits related to his lumbar spine condition.

The claimant did not provide proper notice of his lumbar spine injury. Under our Rules, a claimant is required to provide timely notice of any injury to her employer. Arkansas Code Annotated § 11-9-701(a)(1) provides that:

Unless an injury either renders the employee physically or mentally unable to do so, or is made known to the employer immediately after it occurs, the employee shall report the injury to the employer on a form prescribed or approved by the Workers' Compensation Commission and to a person or at a place specified by the employer, and the employer shall not be responsible for disability, medical, or other benefits prior to receipt of the employee's report of injury.

The claimant provided no notice of having an injury to his low back until November 16, 2022. This contention would later change on May 8, 2023, when the claimant alleged injuries to his left lower extremity, back, left

hip, and pelvis. The claimant's previous reports of injuries only addressed his left lower extremity. At no point was the claimant unable to report an injury, as he had done so on two prior occasions. We cannot construe that the respondents have the burden of guessing what injuries a claimant may ever allege. Because the claimant did not give timely notice of these complaints, the respondents cannot be held responsible for benefits relating to the claimant's low back prior to the claimant providing proper notice on November 16, 2022, even if the back claim is found to be compensable.

Accordingly, for the reasons set forth above, I must respectfully dissent.

MICHAEL R. MAYTON, Commissioner