

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H206756

JEREMY E. GRIGG, EMPLOYEE

CLAIMANT

INTREGATED STAIR SYSTEMS, EMPLOYER

RESPONDENT

**OHIO SECURITY INSURANCE COMPANY,
CARRIER/LIBERTY MUTUAL GROUP, TPA**

RESPONDENT

OPINION FILED MAY 9, 2023

Hearing before Administrative Law Judge, James D. Kennedy, on the 15th day of March 2023, in Mountain Home, Baxter County, Arkansas.

Claimant is represented by Mr. George H. Bailey, Attorney-at-Law, of Little Rock, Arkansas.

Respondent is represented by Mr. Jason M. Ryburn, Attorney-at-Law, of Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 15th day of March, 2023, to determine the issues of compensability for a claimed work-related injury; plus medical; temporary total disability from August 29, 2022, to a date to be determined; and attorney fees. All other issues were reserved. The respondents contended that the claim was not compensable. At the time of the hearing the parties stipulated the claimant earned an average weekly wage of \$520.00, entitling him to temporary total disability and permanent partial disability rates of \$347.00 / \$260.00, respectively. 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 or about August 29, 2022, the date of the claimed injury in question.

The claimant's and respondent's contentions were all set out in their respective responses to the prehearing questionnaire and made a part of the record without objection. The sole witness was Jeremy E. Grigg, the claimant. 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 Arkansas Code Annotated §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 August 29, 2022, the date of the claimed injury. At the time, the claimant earned an average weekly wage of \$520.00 a week, sufficient for temporary total disability and permanent partial disability rates of \$347.00 / \$260.00, respectively, per week.
3. That the claimant has failed to satisfy the required burden of proof to show he sustained a compensable work-related injury on August 29, 2022.
4. That based upon the above finding, all remaining issues are moot.
5. 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 two (2) exhibits that were admitted without objection: (1) 26 pages of medical reports; and (2) the earning records and Arkansas Form-AR-N which consisted of four (4) pages. The respondents also submitted two (2) exhibits: (1) 80 pages of medical reports which were allowed to be proffered; and

(2) the deposition of the claimant taken on March 2, 2023, which consisted of twenty-seven (27) pages.

In addition, both parties voluntarily submitted briefs which were blue-backed and made a part of the record herein.

The claimant, Jeremy E. Grigg, testified he graduated from Calico Rock High School in 2002, and since that date, has taken on-line classes. He thought he went to work for the respondent on or about August 17, 2022, and then hurt his lower back on August 29, 2022, while stacking platforms. The platforms looked like an aluminum table with four (4) legs and were stacked after turning the first one upside down, the second one was then stacked right side up, and then the third one would be stacked upside down. He stated they were instructed to obtain assistance when stacking the fourth one, but he attempted to stack the fourth one by himself, lifting it from about twelve (12) inches high at the position where he grabbed hold of it to chest high. He stated he picked up the platform about halfway and felt a pop in his back. He reported the injury to Timmy Sutton, who had seniority at the work site at the time. The claimant stated the pain was “pretty severe pain in my lower left side here, and I mean, it got so bad I had to leave. I had to go to the doctor.” (Tr. 7-10)

The claimant went to his primary care provider that day and saw Thelma Owens, APRN. He received a shot he thought was Tylenol 4 and was placed on work restrictions. He returned to see Ms. Owens on or about September 6, 2022, and she ordered an MRI. He stated he was in unbelievable pain between the dates of August 29 and September 6, 2022, with pain running down his legs which was the worst pain in his life. After the MRI, the claimant was referred to a neurosurgeon, Dr. Gocin, in Mountain Home. He had

to return to Ms. Owens prior to seeing Dr. Gocin, due to the pain, and obtained work restriction slips which he presented to his employer. (Tr. 11-12)

The claimant thought he saw Dr. Gocin on October 24, after seeing Ms. Owens three (3) times and obtaining the MRI. He was given hydrocodone, a muscle relaxer, and sent to physical therapy. He returned to Dr. Gocin a second time where it was determined he would need surgery, which occurred on December 29, 2022, and consisted of a discectomy. He stated he was not doing much better, that another MRI had been scheduled in two (2) weeks, and he had not been released. Currently, he was not able to do much, spending his time in bed or in a chair. He had only improved a little. He admitted he had trouble with his spine when he received an x-ray at the IZARD County Medical Clinic in 2014 and had been seeing Ms. Owens during that time period. He thought she told him he had a deep deformity at T12--L1. He was then referred to Dr. Green, a specialist in Mountain Home, for a steroid epidural and someone told him he had a compression deformity at T12–L1. He received additional injections from Ms. Owens because he was hurting in the small of his back and did not have pain running down his legs at that time or pain in his hips. (Tr.13-16) He remembered receiving additional shots in his hip in May of 2016, because he was hurting at the same spot in his lower back. He testified he did not hurt below the waist in 2016. When he received shots in 2017, he was suffering from pain in the middle of his back. The claimant admitted he had an opportunity to review his medical records which provided for low back pain as opposed to mid-back pain. He admitted receiving shots in 2020 and being prescribed Xanax and Tylenol 4 during that time period. (Tr.17-18) The claimant testified that he was hurting in the middle of his back at that time, with no pain running down his legs.

“There’s a lot of pain increase after August 29th from the part that was in my middle back, but it was just kind of a, it was dull ache here (indicating) and this was a sharp pain, shooting pains down my legs after the 29th.” He had not experienced pain in his legs or hips prior to August 29th and had not experienced conditions where he could not work. He stated he was doing pretty well from June of 2020 up until August 29, 2022. (Tr. 19-20) He had been working in landscape work and foundation repair and had not had Tylenol back in 2020. (Tr. 21) The claimant thought his next appointment was on March 27th.

Under cross-examination, the claimant testified he injured the lumbar section of his spine on August 29, 2022, and not the thoracic section. He also admitted his condition was pre-existing and he had suffered low back pain since 2009 where a 2014 medical report referenced a 2009 x-ray of the lumbar spine. The claimant also admitted he had suffered a work injury in 2014 when he stepped in a hole while lifting trusses and had hurt his lower back and right leg. (Tr. 25-26) He had forgotten about that injury when questioned in his deposition. The 2014 work injury was not a workers’ compensation claim because he was only out of work maybe a day or two. He admitted that after the 2014 work injury, he suffered lower back spasms and was treated with hydrocodone, Tylenol 4, and Flexeril. (Tr. 27) He also admitted that from time to time, he had been referred to Dr. Green, a surgeon in Mountain Home, who he thought ordered an MRI in 2014, but he had not obtained the MRI report either. The claimant was also questioned about presenting to the Clinic of Calico Rock on January 2, 2017, with a complaint of acute lower back pain and was asked what happened. He responded, “I’m not sure

anything. I believe it was just around the middle of my back was hurting. I'm not sure why it's acute." (Tr. 28)

In regard to the respondent employer, the claimant stated he had worked there three (3) times and when asked if he had complained to his employer about back pain prior to the date of the August 2022 injury, he responded "Not that I know of, I haven't." The claimant was then asked about his deposition where he indicated the pain was between his shoulder blades and he responded, "Yes in between my shoulder blades" and now was pointing to his lower back and he responded, "It would be considered my lower back, yes. I didn't realize at the time that it would be considered lower back –." He agreed that at the time of his deposition, he pointed to a spot between the shoulder blades, and stated, "I couldn't really see where I was pointing at, I guess, and yes, I just agreed with you, that you said shoulder blades, that's what I was thinking." (Tr. 29-30) The claimant was then specifically asked if there was a reason he did not describe his previous lower back complaints when he was deposed just a short time ago and he responded, "I just, I didn't, I thought they were before I got my epidural. I just had my dates and memory wrong on that part." He went on to state he had remembered his previous back problems, just not the dates. (Tr. 31) The claimant was also questioned about relating his back symptoms to his T-12 deformity and a tackle back in high school football and he responded that the pain was in his lower back and lower part of his rib cage. (Tr. 32) He had never had pain, "in between my shoulder blades, I guess. I was thinking about the epidural they gave me, and it felt like it went all the way up my back." (Tr. 33)

The claimant admitted he had been self-employed for three (3) years immediately prior to working for the respondent. He admitted having Obamacare/Medicaid during that period of time, but no workers' compensation insurance, while doing foundation work laying blocks under a house. (Tr. 33-34) The discrepancies in his deposition testimony and today's hearing were due to "mis-remembrance." (Tr. 35)

In regard to medical records, the claimant submitted twenty-six (26) pages of medical records. The initial report dated August 29, 2022, by Thelma Owens, APRN, provided the claimant presented with lower back pain due to lifting something and was given Toradol in the left hip, Kenalog and Triamcinolone in the right hip, a prescription for Tylenol 4 and Prednisone, and an off-work slip which provided the claimant could return to work on September 6, 2022. (Cl. Ex. 1, P. 1-3) The claimant returned to Ms. Owens on September 6, 2022, and an MRI was scheduled along with a referral to Dr. Gocio, and an off-work slip providing the claimant could return to work on September 26, 2022. (Cl. Ex. 1, P. 4-6)

The MRI of the claimant's lumbar spine dated September 17, 2022, provided for a chronic appearing mild T12 compression deformity with a five percent (5%) height loss and no acute fracture or dislocation seen. Degenerative endplate changes were seen at the T12 and L1 and L5-S1 levels. Under impression, the report provided for moderate subacute degenerative spondylosis of the lumbar spine that was most prominent at the L5-S1. No acute fracture dislocation was seen, but chronic appearing T12 compression deformity was noted. (Cl. Ex. 1, P. 7-8)

The claimant returned to Ms. Owens on October 14, 2022, for continued lower back pain and prescription renewal. (Cl. Ex. 1, P. 9-10) On October 24, 2022, the

claimant presented to Dr. Gocio, with the complaint of low back pain, left hip pain, and left sciatica, with an assessment of displacement of the lumbar intervertebral disc with radiculopathy and acute left-sided low back pain and left sided sciatica. Another off-work note till November 28, 2022, was issued. (Cl. Ex. 1, P.11-15) On November 28, 2022, the claimant again returned to Dr. Gocio. The claimant's symptoms and the clinical findings were reviewed and the report provided the original assessment had not changed. Another off-work slip was issued which provided for no lifting over fifty-one (51) pounds and further stated the claimant could not return to work until after surgery. (Cl. Ex. 1, P. 16-19) Surgery occurred on December 29, 2022. A paramedian disc herniation at L5-S1 left, with compression of the thecal sac and spinal nerve along with foraminal stenosis and spondylosis were found. (Cl. Ex. 1, P. 20-21) The claimant was then seen by Brandy Anderson, APRN, on February 14, 2023, who provided that the claimant went for one session of therapy and stated that he had severe worsening of back hip and leg pain and then did not continue the physical therapy. The report provided the claimant had some improvement, but still maintained significant complaints. (Cl. Ex. 1, P. 22-24)

Claimant's second exhibit was the schedule of his weekly earnings and an Arkansas Form AR – N, which provided he had lifted a platform to stack and felt a small pop in his back while bending over them. (Cl. Ex. 2)

The respondents Exhibit One consisted of eighty (80) pages of medical records and most of the records came from Ms. Owens, APRN. A summary of the visits provided that an x-ray of the lumbar spine dated May 29, 2014, was compared to a previous x-ray study on October 16, 2009, and it was noted that the earlier x-ray report could not be found, based upon the testimony. The report provided that no acute fracture and no

pedicle destruction were seen. Degenerative disc space narrowing of moderate severity with mild end-plate osteophyte spurring was noted at the T12-S1 level. This had slightly worsened from the earlier study. (Resp. Ex. 1, P. 2-4)

The claimant again returned to Ms. Owens, APRN, on May 29, June 5, and June 17, 2014, with low back pain specifically mentioned; the claimant then returned on June 30, July 23, and August 29, 2014, for anxiety and insomnia; later on November 25, 2014, January 24, 2015, and April 21, 2015, the claimant returned for insomnia, anxiety and other health issues. The record also provided the claimant again returned multiple times for Xanax, Ambien, and other refills.

On August 10 and September 8, 2015, the claimant again presented with lower back pain, muscle spasms, and other health issues. On November 17, 2015, the claimant obtained a prescription for Tylenol #4 for chronic pain, and again returned on December 18, 2015, for chronic pain. On December 22 and December 31 of 2015, the claimant presented with anxiety and other health care issues. On January 11, 2016, the claimant again returned for lower back pain and anxiety. On January 26, 2016, the claimant presented with muscle spasms and other health issues. The claimant then returned on February 9, 12, and 29; March 5 and 28; April 5 and 26; May 3, 12, and 27; June 28; July 12; August 25; September 24; October 22; November 21; and December 21, 2016, presenting at various times with anxiety, chronic pain, and lower back pain. On January 2, and 19; March 18; April 18; May 18; June 16; July 17, 18; August 18; September 16; October 14; November 14; December 14, 2017, the claimant presented at various times with lower back pain and chronic pain on various visits and obtained numerous refills. It appeared the first visit in 2018 was on June 14 with multiple visits following that year, with

complaints of chronic pain and anxiety, plus additional health issues. The claimant appeared to present to Ms. Owens significantly less in 2019, but was still being prescribed Tylenol 4 and Xanax for lower back pain and anxiety. On June 1, 2020, the claimant returned with a complaint of lower back pain. The claimant again returned on March 27 and July 26, 2021, requesting refills for hypertension and anxiety. On December 21, 2021, the claimant presented with complaints of headaches and additional health issues and then returned on June 21, 2022, for refills in regard to hypertension and anxiety. (Resp. Ex. 1, P. 5-79)

The respondents also submitted the claimant's deposition which was taken on March 2, 2023, less than two (2) weeks prior to the hearing. The claimant admitted that at the time of his deposition, he was on probation for a felony. (Resp. Ex. 2, P. 6) He also admitted he had received an epidural four (4) years earlier for his upper back from Dr. Green in Mountain Home and was provided an MRI, probably back in 2016, and his symptoms at the time were pain in his upper back. When he lifted anything, he suffered pain, "in between his shoulder blades." He also stated that his primary care provider was Ms. Owens, who treated him primarily for depression. (Resp. Ex. 2, P. 10) When asked about the time period between 2016 or 15, whenever it was, and 2022, and did he have any treatment for his spine, he responded "no." (Resp. Ex. 2, P. 11) He admitted he had injured his back in 2015 or 16 when he got tackled in high school and that was what caused his upper back problem. (Resp. Ex. 2, P. 16)

DISCUSSION AND ADJUDICATION OF ISSUES

In regard to the primary issue of compensability, the claimant has the burden of proving, by a preponderance of the evidence, that he is entitled to compensation benefits

for the injury to his lower back under the Arkansas Workers' Compensation Act. In determining whether the claimant has sustained his 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).

An objection was made in regard to the admission of the medical records submitted by the respondents and the respondents were allowed to proffer the exhibit. The Workers' Compensation Commission has wide discretion in the admissibility of evidence, and after reviewing the evidence in the exhibit, it is determined that the medical evidence in the respondent's exhibit will assist in accurately ascertaining the rights of the parties and consequently, is held to be admissible.

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, in a deposition only about two (2) weeks prior to the hearing, the claimant denied having any treatment for his spine between 2015 or 2016, through 2022, and described the previous issues with his back being in his upper back between his shoulder blades. At the time of the hearing, he testified he didn't realize at the time that it would be considered the lower back. In regard to his pointing to a spot between his shoulder blades in the deposition, he testified, "I couldn't really see where I was pointing at, I guess, and yes, I agreed with you, that you said shoulder blades, that's what I was thinking." He additionally testified in his deposition in regard to previous medical treatment, that his primary care provider mainly treated him for depression in the years prior to the above claimed work injury. However, in reviewing the medical records, as provided above, it is clear Ms. Owens treated the claimant multiple times for chronic pain and specifically lower back pain, with the testimony provided by the claimant at best an aggressive improvement on the truth. The claimant suffered a work injury back in 2014 when he stepped in a hole

while lifting trusses. He also testified about a back injury while playing high school football.

Under Arkansas Workers' Compensation law, it is also clear that an employer takes the employee as it finds him and employment circumstances that aggravate preexisting conditions are compensable. *Heritage Baptist Temple v. Robinson*, 82 Ark. App. 460, 120 S.W.3d 150 (2003). It is also noted that 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. *Hall v. Pitman Construction Co.* 235 Ark. 104, 357 A.W.2d 263 (1962)

Specifically, a workers' compensation claimant bears the burden of proving the compensable injury, by a preponderance of the evidence. Ark. Code Ann. §11-9-102(4)(E)(i). A compensable injury is one that was the result of an accident that arose in the course of his 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, the only testimony or finding in regard to the injury being connected to the work-related date of August 29, 2022, was the testimony of the claimant. The claimant had suffered from back injuries for over a decade and had previously received multiple x-rays and MRI's in regard to his back. He also appeared to

have forgotten about significant treatment for his back provided by Ms. Owens and had even confused the area between his shoulder blades with his lower back during his deposition, only a few weeks earlier. Consequently, there is no alternative but to find that the claimant has failed to satisfy the required burden of proof to show the claimed work-related lower back injury and his lower back problems were in fact work related to the injury on August 29, 2022. Consequently, all other issues are moot.

After weighing the evidence impartially, without giving the benefit of the doubt to either party, it is found that the claimant has failed to satisfy the required burden of proof to show he suffered a compensable work-related injury to his lower back on August 29, 2022, and consequently, all the other issues are moot. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

JAMES D. KENNEDY
Administrative Law Judge