

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H206756

JEREMY GRIGG,  
EMPLOYEE

CLAIMANT

INTEGRATED STAIR SYSTEMS, d/b/a  
COMPLETE ACCESS, EMPLOYER

RESPONDENT

OHIO SECURITY INSURANCE COMPANY,  
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED SEPTEMBER 6, 2023

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

Claimant represented by the HONORABLE GEORGE H. BAILEY, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE JASON M. RYBURN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed May 9, 2023. The administrative law judge found that the claimant failed to prove he sustained a compensable injury. After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained a compensable injury. The Full Commission finds that the medical treatment of record provided following the compensable injury was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). We find that the claimant

proved he was entitled to temporary total disability benefits beginning August 29, 2022 until a date yet to be determined.

#### I. HISTORY

The record indicates that Jeremy Grigg, now age 39, was treated by Thelma Owens, APN beginning May 29, 2014: "Was lifting tresses (sic) yesterday when he stepped in hole hurting his lower back and R leg. DOI – 5/28/2014." Thelma Owens' impression/diagnosis was "1. Lower back pain. 2. R leg pain."

An x-ray of the claimant's lumbar spine was taken on May 29, 2014:

AP, lateral, and cone-down lateral views of the lumbar spine are compared to a study from 10/16/09. No acute fracture is seen. No pedicle destruction is seen. Degenerative disc space narrowing of moderate severity with mild end-plate osteophyte spurring is noted at the T12-L1 level. A small Schmorl's node anteriorly producing slight indentation upon the inferior end-plate of T12 is also seen. The remainder of the disc spaces are unremarkable. There is no spondylolisthesis.

IMPRESSION: DEGENERATIVE CHANGES AT THE T12-L1 DISC LEVEL SLIGHTLY WORSENERD FROM THE PREVIOUS STUDY.

Thelma Owens' impression/diagnosis on June 5, 2014 was "1. Back pain for injury (continue to worsens (sic)). 2. Muscle spasm lower back."

Ms. Owens diagnosed lower back pain and muscle spasm on June 17, 2014.

Thelma Owens' diagnosis on September 8, 2015 included Lower Back Pain. The claimant continued to frequently follow up with Thelma

Owens for symptoms which included Chronic Pain, Back Pain, and Muscle Spasm.

The record indicates that the claimant's date of hire with the respondents was August 18, 2022. The respondents' attorney cross-examined the claimant:

Q. Now according to your non-medical exhibit, page 1, you started working at the Respondents, Integrated Stair, on August 18 of 2022.

A. Yes. I'd worked there before August of 2022. I've worked there three times before.

Q. So you're describing a different period of employment?

A. Yes.

The parties stipulated that the employee-employer-carrier relationship existed on or about August 29, 2022. The claimant testified on direct examination:

Q. Did something unusual happen to you on August 29, 2022?

A. Yes, I hurt my back, my lower back.

Q. Okay. Would you just describe what was the task that you were attempting to complete when you hurt your back?

A. I was stacking platforms, just lifting up the third platform to stack onto the stack.

Q. All right. Now, could you just describe these platforms a little bit? Are they sort of like a table?

A. It looked like a table, an aluminum table....

Q. So when you were lifting that particular unit, just tell us what you did and what happened and how it felt.

A. We'd pick it up, and about halfway through picking it up I felt the pop in my back. The rest of the day when I stayed at work I was drilling and riveting and it just kept getting worse and worse after that, but I felt the initial pop on that third platform picking it up....

Q. What was your condition immediately after lifting this?

A. It 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 see a doctor about it.

According to the record, the claimant treated at IZARD County Medical Center, LLC – Rural Health Clinic on August 29, 2022. Thelma Owens, APN noted at that time, "At work today, was lifting/twisting something, L lower back side. Req. something for pain. Doctor note today." The claimant testified that Thelma Owens treated him with injections and medication. Ms. Owens signed a Certificate To Return To School Or Work indicating that the claimant was off work beginning August 29, 2022 and was able to return to work on September 6, 2022.

The claimant followed up with Thelma Owens on September 6, 2022: "Was injured @ work lower back x 1 week ago – Boss said needed to be re-checked. Continues with pain lower back.... Will schedule MRI." Ms. Owens again took the claimant off work on September 6, 2022.

The claimant signed a Form AR-N, EMPLOYEE'S NOTICE OF INJURY, on September 13, 2022. The ACCIDENT INFORMATION section of the Form AR-N indicated that the Date of Accident was August 29, 2022, and that the employer was notified on September 2, 2022. The claimant wrote on the Form AR-N that he injured his Lower Back: "I lifted a platform to stack and band them. I felt a small pop in my back. Bending over platforms to drill and rivet aggravated (sic) it further."

An MRI of the claimant's lumbar spine was taken on September 17, 2022 with the following impression:

1. Moderate subacute degenerative spondylosis of the lumbar spine most prominent at the L5-S1 level see above for detailed discussion of individual levels.
2. No acute fracture dislocation is seen. Chronic appearing T12 compression deformity seen.

The claimant testified that Thelma Owens referred him to Dr. Allan C. Gocio. Dr. Gocio reported on October 24, 2022:

This patient presents on today's date which is 10/20/2022 with complaints of low back pain, left hip and leg pain, left sciatica. Patient describes injuring his back at work August 28, 2022. Patient has had steroid injections, pain medication which have not been helpful. Exercise increases the pain. Patient has been off work for 2 months. Patient describes his pain as continuous, rates it at 10/10. Patient describes throbbing pain in the lower back and sharp shooting pain in the legs worse on the left side... Patient states that he felt a pop in his back when he was lifting at work.

Dr. Gocio assessed "1. Displacement of lumbar intervertebral disc with radiculopathy" and "2. Acute left-sided low back pain with left-sided sciatica." Dr. Gocio planned, "I recommended symptomatic management, short course of physical therapy, no work. Follow-up visit 3 weeks. If symptoms continue to be severe and patient has no resolution of back hip and leg pain surgical treatment would be an option. Further treatment planning will be based on response to initial course of physical therapy and symptomatic management."

Dr. Gocio noted on November 28, 2022:

Patient presents for follow-up visit on today's date which is 11/28/2022. Patient went for 1 session of physical therapy, he had severe worsening of his back hip and leg pain, he has not continued with physical therapy for this reason. He describes his pain as severe, continues with back hip and leg pain, left sciatica....I believe he will get better more quickly with surgery, would offer lumbar laminotomy, foraminotomies, discectomy L5-S1 left for his condition....

Dr. Gocio's examination of the claimant's back showed "paraspinous muscle spasm bilateral."

Dr. Gocio performed surgery on December 29, 2022: "Lumbar laminotomy, foraminotomies, discectomy L5-S1 left." The surgical findings were "Paramedian disc herniation L5-S1 left with compression of the thecal sac and spinal nerve, foraminal stenosis L5-S1 left. Spondylosis."

A pre-hearing order was filed on January 10, 2023. The claimant contended, "Claimant contends that he sustained a compensable injury on or about August 29, 2022, during the course of and within the scope of his employment with Respondent Employer. Claimant sustained injuries to his back, lumbar-sacral spine and thoracic spine, including foraminal stenosis at more than one level. Claimant contends that he is entitled to additional reasonable and necessary medical treatment and unpaid medically related travel expenses, and in particular back surgery and outstanding travel expenses. Claimant contends that he is entitled [to] TTD, and or TPD, from August 29, 2022, to a date yet to be determined. Claimant contends that he is entitled to benefits in the form [of] Anatomical Physical Impairment, which

is yet to be assessed, wage loss disability, Permanent Partial Disability. All issues related to permanent injury and impairment are reserved. Statutory attorney fees based upon all controverted amounts are claimed.”

The respondents contended, “Respondents have not been provided with any medical evidence indicating that a compensable injury occurred.”

The parties agreed to litigate the following issues:

1. Compensability.
2. Claimant’s entitlement to reasonable and necessary medical treatment and unpaid medically related travel expenses, including back surgery.
3. Claimant’s entitlement to temporary total disability and/or permanent partial disability from August 29, 2022, to a date yet to be determined.
4. Attorney’s fees.
5. All issues related to permanent injury and impairment are reserved.

Brandi Anderson, APRN reported on January 12, 2023, “Patient here for a post op f/u. He is s/p discectomy/decompression on 12-29-22 with Dr. Gocio. He reports that his left leg is better. He states that the right leg is somewhat painful now. He reports back pain.”

The claimant followed up with Brandi Anderson on February 14, 2023: “He reports continued leg and back pain. He states that his legs go numb almost every day. This is worse when he has been sitting for very long.”

The claimant testified in a deposition taken March 2, 2023, and a hearing was held on March 15, 2023. An administrative law judge filed an

opinion on May 9, 2023. The administrative law judge found that the claimant failed to prove he sustained a compensable injury. The claimant appeals to the Full Commission.

## II. ADJUDICATION

Act 796 of 1993, as codified at 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).

The employee has the burden of proving by a preponderance of the evidence that he 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, "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." The Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained a compensable injury.

The record indicates that the claimant has been treated for chronic back pain and other complaints since at least 2014. The claimant reported low back and right leg pain following a work-related incident with another employer in 2014. An x-ray in May 2014 showed degenerative changes at T12-L1.

The claimant became employed with the respondents on August 18, 2022. The claimant testified on cross-examination that he had also been employed with the respondents at three earlier times. In any event, the parties stipulated that the employee-employer-carrier relationship existed on August 29, 2022. The claimant testified that he felt a "pop" in his back that day while lifting and stacking platforms for the respondents. The claimant testified, "It 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 see a doctor about it."

The evidence of record corroborated the claimant's testimony. Thelma Owens, APN reported on August 29, 2022, "At work today, was lifting/twisting something. L. lower back side. Req. something for pain."

Thelma Owens treated the claimant conservatively and took him off work. The claimant submitted a Form AR-N, EMPLOYEE'S NOTICE OF INJURY, on September 13, 2022. The report on the Form AR-N corroborated the claimant's testimony: "I lifted a platform to stack and band them. I felt a small pop in my back. Bending over platforms to drill and rivet aggravated (sic) it further." An MRI of the claimant's lumbar spine on September 17, 2022 showed abnormalities including degenerative spondylosis and a "chronic appearing" T12 compression fracture. Thelma Owens referred the claimant to Dr. Gocio, who corroborated the claimant's testimony that he had injured his back at work for the respondents. Dr. Gocio kept the claimant off work and treated him conservatively. The claimant reported no benefit from conservative treatment, and Dr. Gocio performed surgery on December 29, 2022.

The administrative law judge essentially determined that the claimant was not a credible witness. However, an administrative law judge's findings with regard to credibility are not binding on the Full Commission. *Roberts v. Leo Levi Hospital*, 8 Ark. App. 184, 649 S.W.2d 402 (1983). The Full Commission finds in the present matter that the claimant was a credible witness. The Full Commission repeats that the medical evidence of record corroborated the claimant's testimony. We recognize that the claimant, during portions of his testimony at deposition and hearing, was occasionally

a poor historian. Nevertheless, the evidence does not demonstrate that the claimant malevolently or intentionally attempted to mislead the Commission or any party to this proceeding. 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 it deems worthy of belief. *American Greetings Corp. v. Garey*, 61 Ark. App. 18, 963 S.W.2d 613 (1998). Based on the prevailing evidence of record in the present matter, the Full Commission finds that the claimant was a credible witness.

The Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained a "compensable injury." The claimant proved that he sustained an accidental injury causing physical harm to the body. The claimant proved that the injury arose out of and in the course of employment, required medical services, and resulted in disability. The claimant proved that the injury was caused by a specific incident and was identifiable by time and place of occurrence on or about August 29, 2022. In addition, the claimant established a compensable injury supported by objective medical findings not within the claimant's voluntary control. Dr. Gocio reported a surgical finding of "Paramedian disc herniation L5-S1 left with compression of thecal sac and spinal nerve[.]"

The evidence does not demonstrate that the claimant had suffered from an L5-S1 disc herniation prior to the August 29, 2022 accidental injury.


After reviewing the entire record *de novo*, therefore, the Full Commission finds that the claimant proved he sustained a compensable injury in accordance with Ark. Code Ann. §11-9-102(4)(A)(Repl. 2012) *et seq.* The claimant proved that the medical treatment of record on or about August 29, 2022, including surgery performed by Dr. Gocio, was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The claimant proved that he remained within a healing period and was totally incapacitated from earning wages beginning August 29, 2022 until a date yet to be determined. No treating physician has opined that the claimant reached the end of his healing period following the compensable injury. The claimant therefore proved that he was entitled to temporary total disability benefits beginning August 29, 2022 until a date yet to be determined. *See Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981).

The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(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. SCOTTY WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's determination that the claimant has satisfied the burden of proof to show he sustained a compensable work-related injury on August 29, 2022.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish the following 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 identifiable by time and place of occurrence. *Odd Jobs & More v. Reid*, 2011 Ark. App. 450, 384 S.W.3d 630 (2011).

A compensable injury must be established by medical evidence supported by "objective findings." Ark. Code Ann. § 11-9-102(4)(D). Objective findings cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16). There is no requirement that medical testimony be based solely or expressly on objective findings, only that the record contain supporting objective findings. *Singleton v. City of Pine Bluff*, 97 Ark. App. 59, 244 S.W.3d 709 (2006). It is within the Commission's province to weigh all the medical evidence, to determine what is most credible, and to determine its medical soundness and probative force. *Sheridan Sch. Dist. v. Wise*, 2021 Ark. App. 459, 637 S.W.3d 280 (2021). In weighing the evidence, the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. *Id.* Importantly, a claimant's testimony is never uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994).

In the instant case, the claimant repeatedly proves himself to be an unreliable witness. At his March 2023 deposition, the claimant admitted to prior treatment for his spine, but maintained that it was for his upper back, between his shoulder blades, not his lower back. (Resp. Ex. 2, Pp. 9-10). However, when questioned about this at the hearing, the claimant testified, "Well, yeah, that's what I said, but I guess it would technically be considered lower back instead of the upper back. It's just right there about

the bottom of my rib cage I guess is where I should have said it." (Hrng. Tr., P. 22). Further, when asked at his deposition if he had ever been injured on the job previously, the claimant stated, "No." (Resp. Ex. 2, P. 9). The claimant had previously reported a work-related injury in 2014 as discussed below. This clearly does not align with the claimant's medical records, and we can therefore only rely on the strength of the records themselves.

At the March 15, 2023 hearing, respondents presented eighty (80) pages of medical records dating from 2014. (See Resp. Ex. 1). In May 2014, the Dr. David Wadley, a radiologist, found "degenerative disc space narrowing of moderate severity with mild end-plate osteophyte spurring was noted at the T12-S1 level. A small Schmorl's node anteriorly producing slight indentation upon the inferior end-plate of T12 is also seen." (Resp. Ex. 1, P. 4). Thelma Owens, APRN, examined claimant on May 29, June 5, and June 17, 2014. (Resp. Ex. 1, Pp. 5-7). At each of these visits the claimant complained of back pain resulting from a work-related incident where claimant "stepped in hole hurting his lower back and [right] leg." *Id.* On August 10 and September 8, 2015, the claimant again presented to Ms. Owens, APRN with lower back pain and muscle spasms. (Resp. Ex. 1, Pp. 18-19). On November 17, 2015, the claimant obtained a prescription from Ms. Owens for Tylenol #4 for chronic pain, and returned on December 18, 2015 due to chronic pain. (Resp. Ex. 1, Pp. 23, 25). On January 11, 2016,

the claimant returned Ms. Owens due to lower back pain and returned again on January 26, 2016 due to muscle spasms (Resp. Ex. 1, Pp. 28-29). All told, from January 2016 through June 2022, the claimant visited Ms. Owens fifty times related to low back pain, chronic pain, and anxiety. (See Resp. Ex. 1, Pp. 29-79). In this time period, four visits were for specific complaints of low back pain. (Resp. Ex. 1., Pp. 39, 49, 70-71).

With regard to the claimant's present complaints, on August 29, 2022, Ms. Owens reported that 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, Pp. 1-3) On September 6, 2022, Ms. Owens scheduled an MRI and referred the claimant to Dr. Allan Gocio in Mountain Home. (Cl. Ex. 1, Pp. 4-5).

In reviewing the claimant's September 17, 2022 MRI, Dr. Earl Maes found:

[c]hronic appearing mild T12 compression deformity seen with loss of 5% height. I don't see any acute fracture or dislocation. Degenerative endplate changes are seen at the T12 and L1, and L5-S1 levels . . . there is mild intervertebral disc space narrowing seen at the L4-L5 and L5-S1 levels . . . Broad-based posterior disc bulge is seen at the T11-T12 level with disc material encroaching into the foraminal zones causing bilateral mild neural foraminal



narrowing and mild effacement of the ventral thecal sac. (Cl. Ex. 1, P. 7)

Dr. Maes' report concludes that the posterior disc bulge at L4-L5 "causes bilateral mild lateral recess stenosis" and a left subarticular disc extrusion at L5-S1 "causes moderate left lateral recess stenosis with abutment of the descending left S1 nerve root. This causes moderate left and mild right neural foraminal narrowing." *Id.* At that time, the compression deformity seen at T12 was "[c]hronic appearing." (Cl. Ex. 1, P. 8). His impression was moderate subacute degenerative spondylosis of the lumbar spine most prominent at the L5-S1 level.

On October 24, 2022, the claimant presented to Dr. Gocio, with complaints of low back pain, left hip pain, and left sciatica. (Cl. Ex. 1, P. 11). Upon review of the claimant's records, Dr. Gocio noted a history of congenital anomaly of the spine, nucleus pulpous herniation, and lumbosacral radiculitis. (Cl. Ex. 1, P. 12). Dr. Gocio ultimately assessed a displacement of lumbar intervertebral disc with radiculopathy and acute left-sided low back pain with left-sided sciatica and opted for conservative treatment and symptomatic management. (Cl. Ex. 1, P. 13). On November 28, 2022, the claimant returned to Dr. Gocio who reported that the claimant's symptoms and the clinical findings had not changed. (Cl. Ex. 1, P. 16-19). Dr. Gocio recommended surgery at that time. *Id.* The claimant

underwent surgery on December 29, 2022 and Dr. Gocio's operative reports reflected findings of "[p]aramechanical disc herniation L5-S1 with compression of the thecal sac and spinal nerve, foraminal stenosis L5-S1 left. Spondylosis." (Cl. Ex. 1, P. 20). A large synovial cyst was removed during the operation. (Cl. Ex. 1, P. 21).

Most recently, the claimant was then seen by Brandi Anderson, APRN, on February 14, 2023, who stated that the claimant went to one physical therapy session and stated that he had severe worsening of back hip and leg pain and then did not continue the physical therapy. (Cl. Ex. 1, P. 22-24). The report provided the claimant had some improvement, but still maintained significant complaints. *Id.* The claimant was not due for a follow-up appointment until after the March 25 hearing.

The Majority contends that the record does not reflect that the claimant suffered from an L5-S1 disc herniation prior to his alleged August 29, 2022 injury. This, however, disregards the MRI findings approximately two and one-half weeks after the accident that show the changes seen at L5-S1 were degenerative in nature. In fact, the record offers no proof that any of the claimant's complaints resulted from a single incident rather than degenerative changes. Every item indicated by Dr. Maes in his MRI report or Dr. Gocio in his operative report is the result of degenerative changes. Degenerative changes appearing on an MRI after the alleged injury are

insufficient evidence that the claimant's injury was work related when the very nature of those changes are pre-existing. There is absolutely no evidence in the record that the claimant's treatment by Ms. Owens, APRN or any subsequent treatment by Dr. Gocio were causally related to the claimant's alleged on-the-job accident. The claimant has an extensive history of low-back injuries and low-back pain and spasms prior to the alleged work-related injury on August 29, 2022. The records are clear that the claimant did not suffer an acute injury when working for the respondent employer and the claimant's own testimony is unreliable and should be given no weight. The medical evidence is clear that the claimant's back pain has existed since 2014 and is degenerative in nature, not the result of an on-the-job injury.

For the reasons stated above, I respectfully dissent.

  
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MICHAEL R. MAYTON, Commissioner