

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NOS. H103104/H103105

DALE T. HARRIS, Employee	CLAIMANT
NWA TOWING & RECOVERY, INC., Employer	RESPONDENT
ACCIDENT INSURANCE COMPANY, Carrier	RESPONDENT CARRIER #1
AMERICAN INTERSTATE INSURANCE CO., Carrier	RESPONDENT CARRIER #2

OPINION FILED DECEMBER 21, 2021

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by MICHAEL L. ELLIG, Attorney at Law, Fort Smith, Arkansas.

Respondent #1 represented by RICK BEHRING, JR., Attorney at Law, Little Rock, Arkansas.

Respondent #2 represented by ZACH RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 28, 2021, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on July 14, 2021, and a Pre-hearing Order was filed on that same date. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employee-employer-carrier relationship existed between the claimant and Respondent #1 in November 2019.
3. The employee-employer-carrier relationship existed between the claimant and Respondent #2 in October 2020.

4. The claimant was earning sufficient wages to entitle him to weekly compensation benefits at the rates of \$600.00 for temporary total disability benefits and \$450.00 for permanent partial disability benefits.

5. Respondent #1 and Respondent #2 controvert these claims in their entirety.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether the claimant sustained a compensable injury to his lower back in November of 2019.
2. Whether the claimant sustained a new injury, an aggravation of the prior injury, or a recurrence of the prior injury in October of 2020.
3. Whether the claimant is entitled to reasonable medical services for his alleged injuries.
4. Whether the claimant is entitled to temporary total disability benefits from January 20, 2021 until a date yet to be determined.
5. Whether the claimant's attorney is entitled to an attorney's fee.
6. Respondent #1 and Respondent #2 raise the notice defense.

Claimant's contentions are:

“The Claimant contends that he injured his lower back while lifting and installing two dollies on vehicles in the University of Arkansas parking lot before a home game in November of 2019 and that this injury required surgery by Dr. Larry Armstrong. The Claimant further contends that after this surgery by Dr. Armstrong he returned to work for the Respondent Employer and in October 2020 was placing a tow dolly on the Respondent Employer's vehicle and experienced an increase in his low back complaints that result in a second surgery by Dr. Alejandro Castellvi. He further contends that he has been temporarily totally disabled since the date of this surgery by Dr. Castellvi on January 21, 2021. Finally, he contends that his attorney is entitled to the statutory fee on all appropriate benefits awarded.”

Respondent No. 1's contentions are:

“This claim has been denied and controverted in its entirety. The Claimant did not sustain a compensable back injury while employed by the respondent employer on or about November 1, 2019. The Claimant cannot establish a back injury with objective medical findings. The Claimant failed to timely report the alleged incident

on or about November 1, 2019. Therefore, even if compensable, the Respondents are not responsible for any benefits prior to notice of the alleged incident. The Claimant is not entitled to any benefits, as the Claimant's need for medical treatment, if any, is unrelated to his employment for the respondent employer. Instead, the Claimant's physical problems and need for treatment, if any, were the result of a degenerative and/or pre-existing condition.

In the alternative, if it is determined the Claimant sustained a compensable back injury as a result of the alleged incident on November 1, 2019, the Respondents contend the Claimant merely sustained a temporary aggravation of his pre-existing back condition for which he previously resumed his baseline condition.

In the alternative, if it is determined the Claimant sustained a compensable back injury as a result of the alleged incident on November 1, 2019, the Respondents contend an independent intervening cause occurred on October 1, 2020. Therefore, the Respondents are not responsible for any medical or indemnity benefits after October 1, 2020.

In the alternative, if it is determined the Claimant sustained a compensable back injury as a result of the alleged incident on November 1, 2019, the Respondents contend the Claimant returned to work without restriction or impairment prior to October 1, 2020. The Respondents, therefore, contend the Claimant is not entitled to any permanent disability as a result of the alleged incident on November 1, 2019.

In the alternative, if it is determined the Claimant sustained a compensable injury and is entitled to any benefits, the Respondents hereby request a setoff for all benefits paid by the Claimant's group health carrier, all short-term disability benefits received by the Claimant, all long-term disability benefits received by the Claimant and all unemployment benefits received by the Claimant."

Respondent No. 2's contentions are:

"The claimant's back condition preexisted the October 2021 date of injury. No aggravation, or new injury occurred."

The claimant in this matter is a 57-year-old male who alleges to have sustained a compensable low back injury while employed by the respondent employer in November 2019. At that time, the respondent employer had workers' compensation insurance coverage through respondent carrier #1. The

claimant's claim against respondent employer and respondent carrier #1 was filed under workers' compensation file number H103104.

The claimant in this matter has also alleged that he sustained a compensable low back injury while employed by the respondent employer in October of 2020. At that time the respondent employer had workers' compensation insurance coverage through respondent carrier #2. The claimant's claim against the respondent employer and respondent carrier #2 was filed under workers' compensation file number H103105.

The claimant also argues that if his alleged October 2020 injury is not a new compensable injury through respondent employer and respondent carrier #2, then it is either an aggravation or a recurrence of his November 2019 alleged compensable injury with the respondent employer and respondent carrier #1.

The claimant was employed by the respondent employer as a manager/tow truck operator. Some time in November of 2019 the claimant alleges that he was working for the respondent employer towing automobiles from the University of Arkansas parking lots when he injured his low back. The claimant gave direct examination testimony about how he alleges that injury to have occurred as follows:

Q What were you doing at the specific time of the accident?

A Oh, dollying a vehicle. Like I said, pick it up, I mean you do a bunch of them. I mean pick it up and then picking them up off the truck and just when it happened, I just thought I just twisted something. I don't know.

Q What were you doing when you thought you twisted something?

A Picking up the dollies. Picking up the dollies off the back of the truck and setting them on the vehicle. I mean that's what I was doing.

Q All right. What difficulties did you experience at that time? What physical difficulties did you experience at that time?

A My back. I mean just - - you know, you pick them

up a lot, you know, and you are sore. I was sore. I mean - -

Q Was anybody there?

A Yes.

Q Who was that?

A One of the dispatchers, Peggy, because what they do in order to get the vehicles done quicker, you have somebody ride with you so they can do the Towbook so they can take the picture of the vehicles and then enter all of the information just so we can get done quicker.

Q Now, at the exact time of the accident, you said you were sore. Was there any particular onset or did the soreness just show up later on?

A No. I felt it then because - - I mean I cuss. When it happened, I cussed because it hurt. I mean it hurt. More than usual, but . . .

The claimant alleges that he reported his injury by telling “Peyton” who at the time was married to Amanda Hillis, the owner of the respondent employer business.

The claimant was asked about medical treatment due to his alleged November 2019 low back injury on direct examination as follows:

Q And did you seek medical treatment?

A Not right away.

Q All right. Where did you first seek medical treatment?

A Well, I mean I just thought that maybe I pulled a muscle or something, I don’t know, but I mean I went to a chiropractor, you know, and it just didn’t get better.

Q I take it his treatment didn’t do any good?

A No, sir.

Q Did you go to somebody else?

A I went to Dr. Armstrong, I mean - -

Q Did you go to Premise?

A Yes, I went to Premise Health and they referred me.

Q Okay. So you went to the chiropractor first?

A Yes.

Q Premise second?

A Yes.

Q What did they do to you or for you?

A Which one?

Q Premise.

A Premise gave me pain medication and then they referred me to Dr. Armstrong.

Q Did they run any tests on you or anything?

A No, sir.

Q Okay. Did their treatment help any?

A No, sir.

The medical records introduced into evidence do not include any records from the month of November 2019. The first medical record after that date is on December 2, 2019, where the claimant was seen at Elite Chiropractic. The claimant's medical records show his pain level to be at an 8 on a scale of 0 – 10, with 10 being the worst. The record also states that, "Mr. Harris was checked for his responsiveness to the treatment plan." Apparently the claimant's low back condition had somewhat improved from his last visit in that the record states, "Overall assessment of the patient's condition is mildly improved since the last visit. Lower back assessment is determined to be improved." A June 24, 2019 medical record found from Elite Chiropractic was also introduced into the record. It shows the claimant's pain to be at a 10 on a scale of 0 – 10, with 10 the worst. That record states, "Since the last treatment, the patient's progress to care indicates a considerable worsening of symptoms. Lower back

assessment is determined to have deteriorated.” I note that in the claimant’s December 2, 2019 medical record from Elite Chiropractic there is no mention of the November 2019 incident he alleges. In fact, it is apparent that the claimant’s back condition had improved from June of 2019 to December of 2019. The claimant was seen at Elite Chiropractic on at least fourteen occasions prior to his alleged November 2019 low back injury beginning as early as February of 2013. It appears that the claimant’s lower back treatment began sometime in late 2015 at Elite Chiropractic.

On December 5, 2019 the claimant was seen at Premise Health in Fayetteville, Arkansas, by Dr. Joseph Kradel. However, the claimant was not seen for complaints of low back difficulties. Instead, he was seen for an injury to his left hand and given the diagnosis of “contusion of the left index finger without damage to nail.” There is no mention of the November 2019 low back injury the claimant alleges in that medical record or of any low back difficulties generally.

On January 2, 2020, the claimant was again seen at Premise Health. The claimant was seen on that visit by NP Dana Hale. There is no mention of his alleged November 2019 injury. However, the Chief Complaint portion of that record states in part, “Low back pain, pt states L4-5 are ‘bone on bone’ per previous x-ray, several years ago Sparks. Pt states pain is worse when standing up.” The claimant was referred to pain management for degenerative disc disease of the lumbar spine at that time.

On January 17, 2020 the claimant was seen at Mercy Clinic Department of Pain Medicine by Dr. Natalie Strickland. The History of Present Illness portion of that report in part states, “Mr. Harris is a 55 y.o. male who presents to the clinic with lumbar pain which has been gradually worsening over many years.” Dr. Strickland assessed the claimant to be suffering from lumbar radicular pain, DDD and chronic back pain. He was recommended for LESI injections after an MRI, placed on Gabapentin and was to follow up in one month. There is no mention of the claimant’s alleged November 2019 low back injury in this medical report.

On August 3, 2020 the claimant did receive an MRI of the lumbar spine. That diagnostic report was authored by Dr. Eric Hall. Following is the Impression section from that report:

IMPRESION:

1. Central disc extrusion with moderate central/biforaminal stenoses L5-S1.
2. Additional multilevel degenerative changes elsewhere as delineated above.

On August 24, 2020 the claimant was seen at Washington Regional by PA Candace Harper.

Following is the History of Present Illness portion of that medical record:

History of Present Illness

Lumbar Spine Intake (Brief): The patient is being seen for an initial lumbar spine evaluation and is Dr. Natalie Strickland, pain management. The indication for this visit is low back pain and herniated lumbar disc. This condition is injury related. The injury occurred 9 month(s) ago. (Patient states that in November he was lifting a dolly out of his truck and felt back pain radiating down the RLE. He has a history of low back pain with L405 DDD. He hoped this would get better. Since then he saw pain management and has had ESIX2 without great relief. He states that his pain has worsened, now using a cane to help w/ambulation. He states that the whole right leg will go numb when standing, otherwise has pain and numbness and tingling down the buttocks, hamstring, calf into the 4th and 5th toes. . toes are numb all the time.) back pain, buttock pain, lower extremity pain, numbness, no bladder dysfunction and no bowel dysfunction. The patient is currently experiencing symptoms. Current treatment includes activity modification, opioid analgesics and muscle relaxants. Past evaluation has included lumbar spine MRI and pain medicine evaluation. Past treatment has included opioid analgesics and injection(s).

This is the first mention in any medical record since the claimant's alleged November 2019 injury that the claimant discusses an injury to his back. Previously the claimant's complaints were regarding continuing and chronic low back problems that he had dealt with for several years. Surgical treatment options were discussed with the claimant in his August 24, 2020 medical visit and he was referred to Dr. Larry Armstrong for a surgical consult. The claimant eventually underwent surgical intervention at the hands of Dr. Armstrong on September 1, 2020, at which time the claimant underwent a right L5-S1

lumbar microlaminectomy, medial facet facetectomy, lateral recess decompression, foraminotomy and excision HNP.

The claimant testified that following his surgery of September 1, 2020 he was off work for about two weeks. At the hearing the claimant testified about his post-surgical difficulties as follows:

Q And what difficulties were you experiencing after that surgery, if any?

A I mean I was just a little sore from the surgery and then I went back to work.

Q Okay. And did you continue to work for Northwest Arkansas Towing?

A Yes, sir.

Q Up until this second incident?

A Yes, sir.

Q In October of 2020?

A Yes, sir.

It is in October of 2020 that the claimant alleges that he sustained a new injury working for the respondent employer who at that time had workers' compensation insurance coverage with respondent carrier #2. The claimant gave direct testimony about the events he alleges to have caused his compensable injury in October of 2020 as follows:

Q Now, would you describe for the Judge the events surrounding this accident in October of 2020.

A Okay. I went back to work and Amanda called me. Well, she called the shop. I believe she called Rosa, the dispatcher, and said that she blew out two tires on the right side of her vehicle up at Lowe's, so I went out there and I got the vehicle. It's all-wheel drive so I did have to dolly that and I towed her vehicle. And it was right after surgery, so I mean when I picked up the dollies, I don't know if I did it then. I probably did it then. I mean that's when I felt it.

Q Did you feel something happen when you picked up the dollies?

A Yeah, I mean it hurt.

Q Okay.

A Like I said, you have got to pick them up four times per vehicle, an all-wheel drive vehicle, so ...

Q Did you report this incident or accident to anyone?

A I said something, I mean - -

Q All right. Was there anyone there at the incident or accident?

A I mean Amanda was there. It was her vehicle.

Q All right. Did you tell her you experienced some kind of problem?

A It just hurt, I mean - -

Q Did you tell her it just hurt? Did you tell her anything?

A I probably said something. I don't remember exactly. I mean I probably did. I probably said, "Oh, that hurts," or whatever, you know. She was offering to help, but I mean she can't pick them up. I mean she probably could, but I mean - - I don't know.

Q All right. Following this accident, did you seek medical treatment?

A When I went back to Dr. Armstrong, I told him it still hurt, yes.

Q Did you have an appointment already set with Dr. Armstrong?

A Yes, sir. It was a follow-up.

The respondent employer and respondent carrier #1 called Ms. Amanda Hillis as a witness in this matter. Again, Ms. Hillis is the owner of the respondent employer's business and worked in the day-to-

day operations of the respondent employer. Ms. Hillis testified that at no point had the claimant ever informed her that he had sustained a work place injury while working for the respondent employer. Although she was aware that the claimant had back difficulties, he had never asserted that those difficulties were due to any work-related injury. Ms. Hillis further testified that she first became aware that the claimant was claiming any work place injury in July of 2021. She believed the date to be in July of 2021 when she received a notice from her workers' compensation insurance carrier.

On October 8, 2020, the claimant was seen by Dr. Armstrong's PA, Candace Harper, at Washington Regional. Following is the Discussion/Summary portion of that medical record:

Discussion/Summary

Patient presents for 1 month f/u s/p right L5-S1 microdiskectomy. Pt states he felt great x 2 days, then had increased pain down the right posterior and lateral thigh, anterior shin and ankle. Has left posterolateral pain as well. Worse with standing and walking, better w/sitting but pain is constant. Started on Medrol dose pack which has not helped. PCP did doppler which was negative for DVT. Has + SLR bilaterally today on exam. History suggestive of reherniation. Will re-imaging and schedule f/u to review imaging. Also start Keflex for superficial stitch abscess.

On October 22, 2020, the claimant underwent another MRI of the lumbar spine. That diagnostic report was authored by Dr. Kremer Nicholas. Following is the Impression section of that report:

IMPRESSION:

1. POSTOPERATIVE CHANGES FROM RIGHT HEMI-LAMINECTOMY AND DISCECTOMY AT THE L5-S1 LEVEL. NO RECURRENT DISC HERNIATION AT THIS LEVEL.
2. MULTILEVEL LUMBAR SPONDYLOSIS.

On November 11, 2020, the claimant was again seen at Washington Regional, this time by Dr. Brent Weilert. The claimant complained of severe lower back pain with radiation into his buttock and bilateral lower extremities. The record indicates the claimant did well for two weeks following surgery. The claimant also reported a fall two weeks after surgery which worsened his symptoms. During that

visit with Dr. Weilert the claimant received an epidural steroid injection. A chart note was made by PA Harper on November 24, 2020, which in part stated:

Discussion/Summary

Patient failed to improve with injection. Reviewed w/Dr. Armstrong. With myelogram and MRI failing to find reherniation, Dr. Armstrong recommends EMG to r/o active denervation. Discussed with patient. He continues to have frustration, feels he re herniated. Offered EMG, patient wishes to have another opinion. I will help facilitate that, patient wishes to be referred to Mercy Rogers. He is to call should he wish to proceed with EMG/NCV. Pt agrees w/plan.

On December 8, 2020 the claimant was seen by Dr. Alex Castellvi's APRN, Paula Stephens, at Washington Regional for a second opinion. During that visit the claimant told APRN Stephens, "He was doing well for (sic) following surgery, but at two weeks post op, he lifted a heavy tire and fell which resulted in an acute onset of radicular symptoms similar to prior to surgery." The claimant eventually saw Dr. Castellvi on December 16, 2020. In that report Dr. Castellvi stated, "Patient overdid it and it appears he has a reherniation." An anterior lumbar interbody fusion with posterior decompression and instrumentation was recommended at that time. On January 21, 2021 the claimant underwent that surgery at the hands of Dr. Castellvi. The claimant was seen post-operatively by Dr. Castellvi in March of 2021 and reported a positive outcome from the surgery.

On direct examination the claimant was asked why he sought medical treatment for what he alleges to be work injuries under his wife's group health insurance as follows:

Q Can you tell the Judge why you sought medical treatment under your wife's group insurance and why you delayed in filing a workers' compensation claim in this case.

A Back in 2011 I worked for USA Truck and I tore my meniscus cartilage and I filed workers' comp there. Then when I got back to work and everything, I don't know, about a month, two months later, they terminated me. And I asked them why and they said they don't have to tell me because it's a right to work stated. Whatever.

Well, I did, I loved my job at NWA Towing. I mean they were like family to me. They are really good people to work for. I mean I didn't want get fired because I mean people always say - - I hear it from everybody - - you file a workmen's comp, they are going to terminate you because it will raise their insurance rates. Whatever it does. I don't know.

And my job at NWA Towing, I mean I am there to save them money and do my job and do the right thing. That is why I figured, you know, they knew. They did. They knew that I hurt my back. And I mean I didn't want to get fired and I am there to save them money. I am there to make them money. I don't want to - - I didn't want to lose my job. I really didn't. I loved my job. I really did. And I loved my bosses. You know, I never missed a day. Never called in sick. Nothing.

On cross examination by respondent carrier #1, the claimant was asked about not telling medical providers about the work-related injuries he alleges as follows:

Q That's right. In fact, you went from November of 2019 until August of 2020, probably at least ten visits, and there is no mention of a work-related injury, is that correct?

A Yes, sir.

Q All right. And you went to your chiropractor I think you said for your first visit following this alleged incident in December of 2019; is that correct?

A Say that again. I'm sorry.

Q The first time you sought treatment for your back after this alleged incident in November of 2019, that would be in - -

A Yes, sir, that is when my legs were getting numb.

Q And at that time you went to the chiropractor and you didn't report a work-related incident; did you?

A No, sir.

Q I am going to show you Respondent's Exhibit 1, Page 30. It says history of present illness. You went to Mercy Pain Clinic; correct?

A Yes.

Q In January of 2020?

A Yes.

Q All right. It says, “Possible accident or event leading to this pain” and it indicates “no”. So they asked you about whether you had an accident that led to the problems you were having - -

A Right.

Q - - and you indicated no.

A Because I didn’t want to go through her insurance.

Q You indicated no; is that correct?

A Yes, sir.

Q All right.

A I did that so my insurance would pay it.

On cross-examination by respondent carrier #2, the claimant was also asked about failing to tell medical providers about his work-related injury as follows:

Q ... did you ever tell the doctors about this injury that occurred in 2019, November of 2019?

A No, sir, because it would be denied. My personal insurance would not have paid it. And I didn’t want to do that to her.

Q Okay. So you don’t have any problem changing the facts so that an insurance company will pay for it?

A Do what, now?

Q You don’t have any problem changing the facts so an insurance company will pay for your medical when they might not be supposed to?

A Well, what do you mean? I don’t understand what you are saying.

Q You just told me, oh, I didn't say that because I didn't want her to pay for it. I wanted my group health insurance to pay for it.

A I had health insurance that I paid for every month, so I used that. I used my personal health insurance because I - -

Q But your personal health insurance probably wouldn't pay for this if you had disclosed that information.

A Right.

Q So you didn't have any problem not disclosing that information so that your insurance company would pay for this as opposed to work - -

A I didn't want it to fall on her so her insurance went up.

Q And you don't have any problem with that from a moral perspective? Has that moral perspective changed now in today's hearing as you've asked for workers' compensation benefits?

A No, it didn't change. I mean I was doing the right thing. I thought I was, but apparently I wasn't.

On redirect examination the claimant was asked about his need for medical treatment and the quickest and easiest way to get it as follows:

Q After this incident in 2019 and the one in 2020, did you feel that you needed medical treatment?

A 2019, no, I didn't. I just thought I pulled a muscle or something.

Q At some point did you feel you needed medical treatment?

A Yes, sir.

Q And what was the quickest, easiest way to get it?

A Go through my insurance.

Q And in 2020 when this incident happened, what was the quickest and easiest way to get medical treatment?

A Go through my insurance.

On recross examination respondent carrier #1 asked the claimant about honesty as it related to his filing of a claim under his wife's group health insurance as follows:

Q Mr. Harris, I think you talked earlier about your policy that you learned from your father was to be honest; is that correct?

A Yes, sir.

Q But it sounds like the quickest way to get coverage or to get medical benefits right now is what you are saying was to be dishonest; is that correct?

A How is that?

Q Well, you said you didn't tell them about this work-related incident in November of 2019; is that correct?

A I told them. Yes, I did tell them.

Q Earlier you said you didn't tell any of these providers about it.

A O, not to providers, no.

Q You didn't tell the doctors you got hurt at work; correct?

A No, sir.

Q But you here today saying you got hurt at work; correct?

A Yes, sir.

Q All right. So I guess that goes against your policy; right? Was that because it was the quickest way to do it?

A I was trying to do the right thing by my boss. I really was. I mean - -

On direct examination the claimant was asked about low back problems prior to the two compensable injuries he alleges as follows:

Q Now, prior to these two incidents, had you had problems with your back?

A A little bit. Nothing like this.

Q Okay. Have you had problems with - - some problems with your back for a number of years?

A Yes.

Q And have you sought medical treatment even for some of these problems?

A I went to a chiropractor.

Q Okay. Did you seek some treatment from Premise, too?

A Yes, sir.

Q And what did the treatment from the chiropractor consist of?

A Just an adjustment. Just an adjustment, yeah.

Q How did you do after that treatment?

A Good. I did good for a while. I really did.

Q How about Premise, what kind of treatment did they give you?

A They had me get x-rays and then they gave me something for joint pain and pain medications for the back.

Medical records introduced by respondent carrier #1 show that the claimant was taking prescription pain medications for his back at least as far back as 2005. The claimant admitted that during the entirety of his employment with the respondent employer he was taking prescription medication for his back difficulties. The claimant began treating for his low back with Elite Chiropractic as early as 2015. During the last treatment with Elite Chiropractic prior to his first alleged compensable injury in

November 2019 the claimant indicated a pain level of 10 in his low back on a scale of 0 to 10 with 10 being the worst. In December 2014 the claimant reported to Dr. Cheyne that he had “chronic low back and left leg pain with numbness” that had gone on for about two years. Additionally, his low back problems had caused him to seek emergency room treatment. Even the claimant’s medical records after his alleged injuries in November 2019 and October 2020 point to prior difficulties as the cause for his need for medical treatment. In January of 2020 the claimant reported to Dr. Strickland, “Lumbar pain which has been gradually worsening over many years.” The claimant in January of 2020 also stated to NP Hale, “L4-5 are ‘bone on bone’ previous x-ray, several years ago Sparks.” The claimant has clearly had severe low back problems prior to these alleged incidents and appears to be downplaying their significance during his hearing testimony.

The claimant has asked the Commission to determine whether he suffered a compensable injury to his lower back in November of 2019. The claimant’s medical records, including an MRI from August 3, 2020 and the operative report from his September 1, 2020 surgical intervention, certainly show derangement in the claimant’s lower back. Medical records, however, also show that the claimant’s back difficulties predated his allegation of injury in November of 2019. In fact, they show his lower back to have improved from June of 2019 to December of 2019. The claimant’s own statements to his medical providers after his alleged November 2019 injury demonstrate a lower back problem that had been ongoing for years. The claimant tries to explain his reasoning behind being dishonest with medical providers about what caused his lower back difficulties by insisting he was trying to help or aid the respondent employer. This reasoning rings untrue in my ears and does not seem like a reasonable course of action for an injured employee. I do believe that the claimant engaged in the type of towing activities he alleged to have caused his November of 2019 lower back injury, but I do not believe those activities can be causally connected to his lower back difficulties. The claimant’s problems in his low back were longstanding and those problems continued on and are the cause of his low back difficulties, not the November 2019 specific incident injury he alleges. The claimant has failed to prove that he suffered a

compensable injury while employed by the respondent employer who had workers' compensation insurance coverage through respondent carrier #1 in November of 2019.

The claimant has asked the Commission to determine whether or not he suffered a compensable injury in October of 2020. The claimant's MRI dated October 22, 2020 and performed after his first surgical intervention does show additional derangement in the claimant's lower back. Dr. Castellvi believed the claimant had a reherniation at L5-S1. The claimant contends this occurred when he was towing the personal automobile of Amanda Hillis. Ms. Hillis confirmed that the claimant did tow her personal vehicle due to flat tires, but could not remember the date that it occurred. Ms. Hillis also testified that the claimant did not at any point tell her that he injured his lower back while towing her vehicle. The medical records from this time period do not support the claimant's testimony. The medical record from PA Harper dated October 8, 2020 indicates that the claimant "felt great" for two days after surgery and then had increased pain. The record also states, "History suggestive of reherniation." However, two days after surgery the claimant had not yet returned to work. In the November 11, 2020 report from Dr. Weilert the claimant indicates that he did well for two weeks after surgery and then had a fall which caused increased low back and bilateral leg pain. The December 7, 2020 report from APRN Stephens indicates that two weeks after surgery the claimant was lifting a heavy tire and fell which resulted in an acute onset of radicular symptoms. The claimant's allegation that he was lifting equipment to two Ms. Hillis' vehicle is not mentioned in any medical record provided to the Commission. The claimant is unable to prove a causal connection between his lower back difficulties in October of 2020 and the incident he alleges. The claimant is unable to prove that he sustained a compensable specific incident low back injury while employed by the respondent employer who at the time had workers' compensation insurance coverage through respondent carrier #2 in October of 2020.

The claimant's alternative contentions and/or issues that his October of 2020 injury was an aggravation or reoccurrence of his alleged November 2019 injury is moot in that the claimant failed to prove that he sustained a compensable low back injury in November of 2019.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on July 14, 2021, and contained in a Pre-hearing Order filed that same date, are hereby accepted as fact.

2. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his low back in November of 2019 while he was employed by the respondent employer who had workers' compensation insurance coverage through respondent carrier #1.

3. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his low back in October of 2020 while he was employed by the respondent employer and the respondent employer had workers' compensation insurance coverage through respondent carrier #2.

4. The claimant's contentions and/or issues regarding whether his back difficulties in October of 2020 were an aggravation or reoccurrence of his November of 2019 alleged injury are moot in that the claimant failed to prove by a preponderance of the evidence that he sustained a compensable injury in November 2019.

5. The claimant has failed to prove by a preponderance of the evidence that he is entitled to medical treatment or services in this matter.

6. The claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits in this matter.

7. The claimant has failed to prove that his attorney is entitled to an attorney's fee in this matter.

8. Respondent employer and respondent carrier #1 and respondent employer and respondent carrier #2's affirmative defense of notice is moot in that the claimant failed to prove that he sustained compensable injuries in both November of 2019 and October of 2020.

ORDER

Pursuant to the above findings and conclusions, I have no alternative but to deny this claim in its entirety.

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**