

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. G903654 & H208271**

KAITLYN M. IGLEHART,
Employee

CLAIMANT

CITY OF JONESBORO,
Employer

RESPONDENT

MUNICIPAL LEAGUE WC PROGRAM,
Insurance Carrier / TPA

RESPONDENT

OPINION FILED MAY 11, 2023

Hearing before Administrative Law Judge Steven Porch on April 14, 2023, in Jonesboro, Craighead County, Arkansas.

Claimant was represented by Phillip J. Wells, Attorney at Law, Jonesboro, Arkansas.

Respondents are represented by Mary K. Edwards, Attorney at Law, North Little Rock, Arkansas.

I. BACKGROUND

These matters came before the Commission on April 14, 2023, on the compensability of two work-related injuries in Jonesboro, Arkansas. Testimony was taken. The evidentiary record consists of both Respondents' and Claimant's exhibits, oral argument, Claimant's testimony, and post-hearing briefs. Without objection, the two Commission files have been incorporated herein by reference in their entirety.

A prehearing conference was conducted on February 15, 2023, and a Prehearing Order was filed on February 22, 2023. A copy of the Prehearing Order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claims.
2. The employer/employee/carrier-TPA relationship existed on May 4, 2019, and February 5, 2022, when the Claimant sustained a compensable lower back/lumbar spine injury on May 4, 2019, (G903654), and a compensable right shoulder injury on February 5, 2022, (H208271) for which the Respondents paid both medical and indemnity benefits.
3. The Claimant's average weekly wage (AWW) is \$748.50, which is sufficient to entitle her to weekly compensation rates of \$499.00 for temporary total disability (TTD), and \$374.00 for permanent partial disability (PPD) benefits *if* the claimant's alleged lower back/lumbar spine injury of February 5, 2022, is deemed compensable.
4. The Respondents controvert only the Claimant's alleged lower back/lumbar spine injury of February 5, 2022.
5. The parties specifically reserve any and all other issues for future litigation and/or determination.

By mutual agreement of the parties, the issues to be litigated at the hearing are as follows:

1. Whether the Claimant also sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Act (the Act) to her lower back/lumbar spine on February 5, 2022.

2. If the Claimant's alleged injury is deemed compensable, the extent to which she is entitled to medical and indemnity benefits.
3. Whether the Claimant's attorney is entitled to a controverted fee on these facts.
4. The parties specifically reserve any and all other issues for future litigations and/or determination.

The Claimant's and Respondents' contentions are set out in their respective response to the prehearing questionnaire. Said contentions are as follows:

Claimant: The Claimant contends she sustained a fall during the course of her employment on February 12, 2022. The Claimant further contends that the fall resulted in a disc injury to her lumbar spine resulting in lumbar disc surgery.

The Claimant further contends the Respondents should be deemed liable for payment of any and all of her related, reasonably necessary medical treatment and associated expenses, including but not limited to mileage, etc.; to TTD benefits from December 7, 2022, through the date she reached maximum medical improvement (MMI) on or about February 10, 2023; and eventually to appropriate PPD benefits. The Claimant reserves any and all other issues for future determination and/or litigation.

Respondent: The Respondents contend the Claimant filed a workers' compensation claim for a fall on February 5, 2022. They accepted the Claimant's right shoulder as compensable and paid related, reasonably necessary medical benefits. The Claimant now contends she also injured her lower back/lumbar spine in this fall. The Respondents contend the Claimant cannot meet her burden of proof pursuant to the Act in demonstrating by a preponderance of the credible evidence that she sustained a

compensable lower back/lumbar spine injury on February 5, 2022. The Claimant has a history of lower back problems dating back to a prior workers' compensation injury she sustained in a motor vehicle accident (MVA) on May 4, 2019. The Respondents contend that any problems the Claimant is currently experiencing are related to this prior injury and are the result of the February 5, 2022, fall. The Respondents reserve the right to file an amended response to the prehearing questionnaire or other appropriate pleading, and to allege any further affirmative defense(s) that might be available upon the completion of any and all necessary and appropriate discovery. Finally, the Respondents reserve all other issues for future determination and/or litigation.

The record reflects the following history: The Claimant alleges, under claim number G903654, that she has sustained a compensable injury to her whole body including her lower back resulting from a specific incident on May 4, 2019. There an underage and unlicensed driver struck Claimant's patrol car. Respondents allege that this claim was not filed within the statute of limitations deadline.

Claimant also had a second claim, claim #H208271, where she alleges, she has sustained a compensable injury to her right shoulder, elbow, and wrist resulting from a specific incident on February 5, 2022. There Claimant slipped on ice and fell onto the curb as she was heading to her patrol car to go on a work-related call. The Respondents accepted, as a medical only claim, Claimant's injuries to her right shoulder, elbow, and wrist. However, during the full hearing, Claimant further alleged that she also injured her back during the February 5, 2022, incident. The injury to Claimant's back was not noted on her Form AR-1 filed on November 23, 2022, but was noted on her Form AR-C filed on November 22, 2022. The Respondents have controverted Claimant's claim for her lower

back injury on grounds that this was a pre-existing injury since the May 4, 2019, car accident. Respondents further state that Claimant's spine has a degenerative disease and there is a lack of objective findings to substantiate an award for her lower back injury.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over these claims.
2. Claim #G903654 was not filed with the Commission until after the statute of limitations has passed. Thus, I find Claim #G903654, the May 4, 2019, incident is time-barred.
3. The Commission further finds, by the preponderance of evidence, that Claimant's back injury sustained on February 5, 2022, claim #H208271, is compensable. Respondents shall pay for the medical treatment for Claimant's back injury and pay all indemnity benefits due Claimant from December 7, 2022, to February 10, 2023. Respondents shall pay all benefits consistent with this opinion.
4. The Claimant is entitled to Temporary Total Disability at a rate of \$539.00 and Permanent Partial Impairment benefits at a rate of \$404.00. The Claimant is entitled to medical benefits and services for her injury until Claimant reaches maximum recovery.

III. DISCUSSION

At the start of the April 14, 2023, full hearing, we first addressed the issue of the Statute of Limitations for case #G903654, the May 4, 2019, vehicle collision claim. Claimant's counsel, Phillip Wells, conceded that the statute of limitations has run, and it should be dismissed. All parties agreed, and I ruled from the bench that Claim #G903654 was time-barred. And in this opinion, for clarity, I again find that case #G903654 is time-barred. Under Ark. Code Ann. §11-9-702(b)(1) (Repl. 2012):

In cases in which any compensation, including disability or medical, has been paid on account of injury, a claim for additional compensation shall be barred unless filed with the commission within one (1) year from the date of the last payment of compensation or two (2) years from the date of the injury, whichever is greater.

The burden rests on Claimant to prove that his claim was timely filed. *Stewart v. Ark. Glass Container*, 2010 Ark. 198, 366 S.W.3d 358; *Kent v. Single Source Transp.*, 103 Ark. App. 151, 287 S.W.3d 619 (2008). Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012), he must prove this by a preponderance of the evidence. The standard “preponderance of the evidence” means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

Claimant's injury occurred on May 4, 2019. Claimant did not file a Form AR-C by May 4, 2021, the statute of limitations deadline. A Form AR-C is the means for filing a “formal claim.” See *Yearwood v. Wal-Mart Stores, Inc.*, 2003 AR Wrk. Comp. LEXIS 739, Claim No. F201311 (Full Commission Opinion filed June 17, 2003). See also *Sinclair v. Magnolia Hospital*, 1998 AR Wrk. Comp. LEXIS 786, Claim No. E703502 (Full

Commission Opinion filed December 22, 1998)(a claim is “typically” filed via a Form AR-C).

Claimant made no arguments regarding the statute of limitations deadline, only an immediate concession that Claim #G903654 is time-barred and should be dismissed. I find that Claimant has not proven by the preponderance of evidence that an official claim for Claim #G903654 was timely filed and is hereby dismissed. Therefore, there will be no further dealings with Claim #G903654 beyond this point as a viable claim. We will only deal with the February 5, 2022, claim, Claim #H208271, for the remainder of this opinion. The remaining claim has an issue of whether Claimant’s lower back injury is compensable.

Standards. Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2012) defines “compensable injury”:

(i) An accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

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

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v.*

Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997). This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

Moreover, Arkansas Code Annotated Section 11-9-508(a) (Repl. 2012) states that an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown, supra; Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001). I do find that Claimant has proven by a preponderance of the evidence a compensable lower back injury and that

she is entitled to reasonable and necessary medical treatment of her compensable lower back injury. Moreover, I have reviewed her medical records that are in evidence, and I find that she has proven by a preponderance of the evidence that all of the treatment of her compensable lower back injury that is in evidence, on and after February 5, 2022, was reasonable and necessary. However, before going any further, I do note Respondents' argument that Claimant's lower back injury was pre-existing. I do agree that Claimant had a pre-existing back injury.

However, the law is clear that an employer under the Arkansas Workers' Compensation Act takes an employee as the employer finds her. Employment circumstances that aggravate pre-existing conditions are compensable. *Nashville Livestock Comm. v. Cox*, 302 Ark. 69, 787 S.W.2d 64 (1990). A pre-existing infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the infirmity to produce the disability for which compensation is sought. *St. Vincent Med. Ctr. v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996). "An aggravation, being a new injury with an independent cause, must meet the requirements for a compensable injury." *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000); *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). This includes the prerequisite that the alleged injury be shown by medical evidence supported by objective findings. See *Heritage Baptist Temple v. Robison*, 82 Ark. App. 460, 120 S.W.3d 150 (2003). These standards have been met here.

As previously stated, I do find that Claimant has proven by a preponderance of the evidence that she sustained a compensable lower back injury, by specific incident, supported by objective evidence. The facts in support of my decision are as follows:

The parties have stipulated to the employer/employee relationship existing on February 5, 2022, when the Claimant sustained her compensable lower back/lumbar spine injury. The Claimant is a police officer that was actively working for the City of Jonesboro on February 5, 2022. The Claimant was heading to her patrol car to respond to a call when she slipped on some ice striking the curb and injured her lower back as well as her right shoulder, elbow, and wrist. Claimant stated, during her sworn testimony, that she told her supervisor about her back issues but was discouraged by her supervisor from pursuing that lower back injury claim. Claimant testified that her supervisor told her to focus on the shoulder, elbow, and wrist injuries so she can get back to work. Claimant has also admitted under oath to taking shots to help with her back pain before the February 5, 2022, incident. I do find the Claimant's testimony credible.

The Claimant has presented an MRI report written by Dr. Ezekiel Shotts for Claimant's September 19, 2022, visit. Dr. Shotts did a comparison of two MRIs, one taken on December 12, 2021, a few months before the February 5, 2022, because of her pre-existing back issues and another on September 9, 2022, after the February 5, 2022, incident. Dr. Shotts stated in his report, referencing Claimant's L5-S1, "There is a large right paracentral disc protrusion, significantly increased in size compared with the prior study. The protrusion contacts and displaces the right S1 nerve root and contacts the right S2 nerve root." Dr. Shotts' "IMPRESSION" was as follows: "Enlarging right paracentral disc protrusion at L5-S1 with contact of both the right S1 and S2 nerve roots." I find Dr. Shotts' report and analysis credible. Thus, I also find that Claimant has proven by a preponderance of the evidence a compensable aggravated lower back injury stemming from her February 5, 2022, slip and fall with objective findings. Whether you look at

Claimant's injury as a new injury or a pre-existing aggravated injury, the results are the same. The specific injury was the slip and fall during the course and scope of employment and the objective finding is the comparison MRI report showing significant difference in Claimant's lower spine after her fall than what was shown on her MRI a couple of months before the February 5, 2022, incident.

Therefore, the Respondents shall pay Claimant temporary total disability benefits and permanent partial impairment benefits in accordance with state law. The Respondents shall pay Claimant's outstanding medical bills associated with her February 5, 2022, slip and fall injury to her lower lumbar spine, including Claimant's lumbar disc surgery. I also find that Claimant is entitled to mileage associated with her compensable lower back injury.

One of the purposes of the attorney's fee statute is to put the economic burden of litigation on the party who makes litigation necessary. *Brass v. Weller*, 23 Ark. App. 193, 745 S.W.2d 647 (1998). I find that Respondents have controverted Claimant's entitlement to medical benefits and treatment of her lower back injury. Consequently, Claimant has proven by a preponderance of the evidence that her attorney should be awarded a controverted fee thereon pursuant to Ark. Code Ann. §11-9-715 (Repl. 2012).

IV. CONCLUSION

Respondents are hereby directed to pay/furnish benefits in accordance with the findings of fact and conclusions of law set forth above. All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809 (Repl. 2012). See *Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (1995).

Claimant's attorney is entitled to a 25 percent (25%) attorney's fee on the indemnity benefits awarded herein, one-half of which is to be paid by Claimant and one-half to be paid by Respondents, in accordance with Ark. Code Ann. § 11-9-715 (Repl. 2012). See *Death & Permanent Total Disability Trust Fund v. Brewer*, 76 Ark. App. 348, 65 S.W.3d 463 (2012).

IT IS SO ORDERED.

STEVEN PORCH
Administrative Law Judge