

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. H006268**

**JANYL JOHNSON, EMPLOYEE**

**CLAIMANT**

**ACE HARDWARE CORP., EMPLOYER**

**RESPONDENT**

**INDEMNITY INS. CO./ESIS, INC.,  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION FILED MARCH 16, 2021**

Hearing before Administrative Law Judge, James D. Kennedy, on the 4<sup>th</sup> day of February, 2021, in Little Rock, Pulaski County, Arkansas.

Claimant is represented by Andy L. Caldwell, Attorney at Law, Little Rock, Arkansas.

Respondents are represented by Michael Ryburn, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on the 4<sup>th</sup> day of February, 2021, to determine the issues of compensability for injuries to the lumbar region of the lower back as the result of a work-related motor vehicle accident. At the time of the hearing, the claimant announced that he was withdrawing the right hand and right arm claims because these were symptoms of the back injury. It was agreed that the respondents had accepted the injury to the neck as compensable, provided medical as to the neck injury, and paid temporary total disability (TTD) benefits in regard to the injury to the neck. The parties also agreed that the claimant earned sufficient wages to earn the maximum TTD/permanent partial disability (PPD) rate. As stated above, the claimant agreed that he had received TTD, but contended that TTD ceased between September 22 through November 5, 2020, and that he was entitled to TTD for that period of time. The parties also agreed that the respondents initially accepted the claim to the lower back as compensable, but that the respondents were now controverting the claim to the lower back in its entirety. A copy of

the Pre-hearing 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 March 20, 2020, the date of the claimed injury in question.

The claimant’s and respondents’ responses were set out in their respective responses to the Pre-hearing Questionnaire and made a part of the record without objection. The sole witness consisted of Janyl Johnson, 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 witnesses, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. § 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 March 20, 2020, the date of the claimed injury. At the time of the claimed injury, the claimant earned sufficient wages to earn the maximum TTD/PPD rate.
3. That the respondents accepted the claimant’s neck injury that occurred on March 20, 2020, as a work-related compensable injury, and paid the medical and TTD.
4. That the claimant has satisfied the required burden of proof to show that he sustained a compensable work-related injury to the lumbar region of the lower back on March 20, 2020.
5. That the claimant has satisfied the required burden of proof to show that he is entitled to the reasonable and necessary medical treatment of the lumbar region of the lower back. Additionally, the chiropractic treatment he already received was reasonable and necessary.

6. That the claimant has also satisfied the burden of proof to show that he is entitled to additional TTD from September 22, 2020, up and through the date of November 5, 2020.
7. The claimant is entitled to attorney fees pursuant to Ark. Code Ann. § 11-9-715. This award shall bear interest at the legal rate pursuant to Ark. Code Ann. § 11-9-809.
8. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

### **REVIEW OF TESTIMONY AND EVIDENCE**

The Pre-hearing Order, along with the Pre-hearing Questionnaires of the parties, were admitted into the record without objection. The claimant submitted three (3) exhibits that were admitted into evidence without objection: (1) Claimants Exhibit One, which consisted of 149 pages of medical records; (2) Claimant's Exhibit Two, which consisted of six (6) pages of payment and prescription records; and (3) Claimant's Exhibit Three, which consisted of two (2) pages of claim payments.

The claimant, who was the sole witness, testified that he was born on July 29, 1961, and was employed by Ace Hardware on March 20, 2020, when he was involved in a work-related motor vehicle accident where a black pickup crossed the center line and all lanes of traffic and hit the tractor-trailer that he was driving. (Tr. 8, 9) The claimant testified that his neck and entire back were injured. He reported the accident to his manager, Daniel Higgins. Mr. Higgins came to the accident scene and took the claimant to a doctor for a drug test. (Tr. 10)

Later, the claimant sought chiropractic treatment on his own, and was treated for a period of time. Later, the respondents sent the claimant to Concentra. Treatment with Concentra started on the date of April 15, 2020, and the claimant had started treating with his chiropractor a few days earlier. (Tr. 11) Concentra took him off of work for about a

week and placed him on work restrictions on April 29, where he was limited to lifting no more than thirty (30) pounds. The claimant testified that he was not offered work restrictions within those parameters, so after the week off, he returned to work until September. (Tr. 12)

Claimant stated that Doctor Adametz took him off work around September 1 due to his condition at the time. The claimant returned to Doctor Adametz on September 29 and was placed on light duty. (Tr. 13) He was supposed to call into work on Saturday about making his Sunday run and said,

[S]o that Saturday I got to feeling worse. I had a lot of pain going in my arm and everything so I felt that I wasn't going to be able to even do that light duty. So I called my employer that next morning to let him know that I wouldn't be able to do that light duty because the pain and everything come back. And that Monday morning I went right back to Doctor Adametz and he took me off.

The claimant testified that he had been off work since that time and was still treating with Doctor Adametz, primarily for his neck. (Tr. 14) The respondents were currently paying for that treatment and providing TTD, but he did not receive disability payments between September 22 through November 5. The claimant also stated that he was still having issues with his neck, upper back, and lower back, and he used his own insurance for the chiropractic treatment. (Tr. 15)

Under cross examination, the claimant testified that he was currently being treated by Doctor Adametz, but admitted he did receive some treatment from Doctor Burton for his tailbone area below his low back, after a recent fender-bender where he was rear-ended. The claimant admitted that he had not sent the workers' compensation carrier a written notice in regard to the treatment by the chiropractor. The claimant also admitted that he was involved in another vehicle accident in November 2020, where he was again

rear-ended, and that he was still being treated by his chiropractor. The claimant provided he again injured his tailbone area, and that the injury was not in the same area that was injured in the accident involving the tractor-trailer on March 20. (Tr. 16 - 18) He currently was going to the same chiropractor where he presented prior to being treated by Concentra after the March 20 tractor-trailer accident. The chiropractor was now treating him for a different condition than what arose from the truck accident, and the treatment by the chiropractor ended the other day. (Tr. 19)

The claimant testified that he had not returned to work and agreed that he was currently being treated by Doctor Adametz for his cervical spine and low back problems. In response to being asked why the low back problems were not mentioned in the reports of Doctor Adametz, the claimant responded that he was not a doctor or a neurologist, but he had received two (2) injections in his neck from Doctor Hart and was to receive a third injection. He was referred to Doctor Hart by Doctor Adametz. (Tr. 20) He admitted that he had minor back problems prior to the March 20 accident and would go to the chiropractor for adjustments maybe every six (6) months, but was still able to work prior to the work-related accident. The claimant also admitted that he had neck and back injuries in the 1980s, that was probably when he first injured his back, and that he was off work at that time. (Tr. 21) The 1980s injury was a workers' compensation injury consisting of a non-motor vehicle neck injury in the cervical area for which he was probably off work for months. (Tr. 22)

The claimant admitted that he had returned to work his regular job several times since the March 20, 2020, accident. (Tr. 24) He also admitted that he had been released to return to work light duty on November 5. The claimant and Doctor Adametz discussed

the work issues, and the claimant thought that he could return to work and perform light duty. He again had pain in his arm and neck, and reported to his supervisor on a Sunday that he did not feel safe driving the truck with the pain in his arm and neck. He returned to Doctor Adametz on the following Monday, who again took him off work. (Tr. 25, 26)

Under additional cross examination, the claimant testified that from October 5 until November, for a period of about a month and a half, he did not receive TTD. The TTD was reinstated. Doctor Adametz referred him to Doctor Hart, a pain clinic doctor, for pain management, and he was going to see him the next Wednesday for an injection. He was then returning to Doctor Adametz for a follow-up. The injections had decreased his pain levels. (Tr. 27) He was at that time still in contact with his supervisor and working for the respondent. In regard to returning to work, he felt that he would try to after the injection. (Tr. 29) The claimant also stated that the area that the chiropractor was treating, which was his tailbone, was better.

On redirect examination, the claimant admitted that the chiropractic medical record of July 2020 was correct where it stated that the claimant was having neck and upper back problems after a motor vehicle accident. (Tr. 30) The claimant also admitted that where the report provided for “strain of muscle, fascia and tendon of the lower back, initial encounter (new)” sounded right. It was also correct where it provided, “Chief complaint, neck pain, low back pain, headache, loss of sleep, stiffness in the muscles of the posterior neck and cervical spine, joint pain.” (Tr. 31) The claimant agreed that he was still having problems with his low back that stemmed from the accident. (Tr. 34)

On recross examination, the claimant admitted that he was having muscle spasms after the March 20, 2020, accident in his neck and back area. He was questioned about

the report from Doctor Carlee not mentioning muscle spasms and whether Doctor Carlee checked the claimant's spine. In response, the claimant stated that an x-ray was performed, and he was told that Doctor Carlee did not see anything, and he guessed that was when Doctor Carlee referred him to a neurologist. The claimant also admitted that the chiropractor mentioned muscle spasms. (Tr. 35)

The claimant was also questioned about the Arkansas Form N, which did not mention the lower back, but did mention the upper back along with additional body parts. The claimant responded that was where he hurt at the time. (Tr. 39)

The claimant submitted a packet of medical records consisting of 149 pages that was admitted into the record without objection. The claimant presented to chiropractor Doctor Christopher Burton at Pain Relief Chiropractic on April 13, 2020, following a motor vehicle accident. The report provided that the claimant had been involved in a motor vehicle accident and presented with a new radiculopathy of the cervicothoracic region; muscle spasm of the back; generalized muscle weakness; sprain of the lumbar ligaments of the spine; strain of the muscle, fascia, and tendon at neck level; sprain of the ligaments of the cervical spine; segmental and somatic dysfunction of the cervical region; and strain of the muscle, fascia, and tendon of the lower back. The claimant's chief complaint was of neck and low back pain, with headache, loss of sleep, and stiffness in the muscles of the posterior neck and the cervical spine along with joint pain. (Cl. Ex. 1, P. 1 - 5)

On April 15, 2020, the claimant initially presented to Concentra. The initial Concentra report provided that the reason for the visit was a motor vehicle accident that occurred on March 20, where the claimant presented with a sore neck, lower back, and left knee. The x-ray provided no significant radiologic findings. Under impression, the

report provided there was soft tissue swelling and that no definite acute fracture was identified. Further, the report provided that the claimant could return to full work with full participation in essential job functions. (Cl. Ex. 1, P. 6 - 17)

The claimant returned to the chiropractor on April 17, 2020, with the chief complaint being neck pain, low back pain, loss of sleep, joint pain, and stiffness of the posterior neck and the cervical spine. (Cl. Ex. 1, P. 18-20) The claimant returned to the chiropractor on April 20, 22, and 27, 2020, with the final report providing that light duty was recommended for the claimant and that if that was not an option, then the claimant should be excused from work activities for one (1) week. An authorization for absence was issued to avoid aggravating his condition, and the claimant should be excused from heavy, strenuous work activity from April 27, 2020 until May 3, 2020. (Cl. Ex. 1, 21 - 29)

The claimant returned to Concentra on April 29, 2020. The report provided that the claimant was close to being able to perform the physical requirements of his job, but that he was not quite all the way yet. The report further stated that the claimant could return to work, with the restriction of not lifting over thirty (30) pounds. (Cl. Ex. 1, P. 30 – 36) The claimant again returned to Concentra on April 30, and May 1, 4, and 6, of 2020. Starting on the May 1, 2020 visit, the claimant was allowed to return to work with “full participation in essential job functions.” (Cl. Ex. 1 P. 30 – 51)

On May 25, 2020, the claimant returned to the pain relief chiropractor with muscle spasms of the back, muscle weakness, sprain of the ligaments of the lumbar spine, strain of the muscle fascia and tendon at the neck level, sprain of ligaments of the cervical spine, segmental and somatic dysfunction of the cervical region, strain of muscle, fascia, and tendon of the lower back. The report further provided that the claimant was experiencing



a flare-up and was not allowed to participate in work tasks that involved repetitive motion. (Cl. Ex. 1, P. 52 – 55) The claimant again returned to the chiropractor on May 27, 2020, with the short-term goal being to decrease the level of acute pain, and with the long-term goal to improve the overall function of the affected areas. (Cl. Ex. 1, P 56 – 57) On June 1, 2020, the claimant again returned to the chiropractor and specific activator procedures were administered at C2, C3, C4, T2,T4, T5, and T10 left and right. Specific flexion distraction adjustive procedures were administered to the lumbar and thoracic spine. The claimant again returned to the chiropractor on June 3 and 8, 2020. The June 8 report provided under impression that examination indicated manifestations of a sprain/strain of the cervical and lumbar spine. (Cl. Ex 1, P. 58 - 65) The claimant again returned to the chiropractor on the dates of June 8, 10, 15, 17, and 24 of 2020. The report dated June 10 provided that “specific flexion adjustive procedures administered to the lumbar spine.” (Cl. Ex. 1, P. 63 - 75)

The claimant returned to Concentra on June 24, 2020, and July 1, 2020. The report of July 1 provided that the claimant had reached the functional goal but not the end of healing. The assessment provided for neck pain, strain of the right levator scapulae muscle, and cervical radiculitis. (Cl. Ex. 1, 76 – 82) On July 6, 2020, the claimant presented for an MRI without contrast of the cervical spine. The report provided there was degenerative changes at C3-4 to C7-T1, with mild to moderate spinal canal stenosis at C5-6 and C6-7, mild spinal canal stenosis at C3-4 and C7-T1, and varying degrees of neural foraminal stenosis at C3-4 to C7 to T1. (Cl. Ex. 1, P. 83 – 84)

The claimant again returned to the chiropractor on July 6 and 13 of 2020. The later report provided for cervicalgia, contracture of muscle, other muscle spasm, and

segmental and somatic dysfunction of the thoracic region. (Cl. Ex. 1, P. 85 – 89) One (1) day later, the claimant returned to Concentra. The report provided that the claimant was at the functioning goal but not the end of healing. The report further provided that the claimant could return to work with no restrictions and provided a neurosurgery referral for a consult and treatment. (Ex. 1, P. 90 – 92) The claimant continued to return to the chiropractor on July 20, 23, 24, 27, 29, 31, and August 3, 2020. The report of July 24 provided that activator procedures were administered to the cervical, thoracic, and lumbar spine. The report of July 27 mentioned the scheduling of an appointment with a neurologist. (Cl. Ex. 1, P. 93 – 112)

On August 4, 2020, the claimant presented to Doctor James Adametz with the chief complaint of neck pain involving the cervical spine. The report further provided a finding of cervical disc disorder with radiculopathy. Additionally, the report provided that the claimant could return to work on the following day, August 5. Physical therapy for just a week and a steroid pack were ordered. (Cl. Ex. 1, P. 113 – 117) The claimant returned to the chiropractor on August 17, 2020, with the report providing that the claimant had been referred to physical therapy by the neurologist and had responded to treatment but had not reached maximum medical improvement. The report provided that specific activator procedures were provided to the cervical and thoracic spine (Cl. Ex. 1, P. 118 – 120)

The claimant returned to Doctor Adametz on September 1, 2020. The report again provided for cervical disc disorder with radiculopathy. Under plan, the report provided that Doctor Adametz again reviewed the claimant's MRI and described issues at the C4-6, C5-6, and C7-T1. The report further provided that the claimant would be taken off work

for a few weeks, would continue with physical therapy, and would be taking naproxen. (Cl. Ex. 1, P. 121 – 125)

The claimant again returned to Doctor Adametz on September 29, 2020, and the MRI was again reviewed. The report provided there were multiple abnormalities at C4-5 and a right sided disc abnormality at C7-T1. There was also a little bit of weakness in the right biceps and a numbness in the C7 and C8 distribution. The report further provided options, which included surgical treatment, were discussed, but that surgery would be difficult due to the many levels involved and a referral to a pain doctor would be looked at. Additionally, the report provided that the claimant would be released to driving only and no lifting over fifteen (15) pounds. (Cl. Ex. 1, P. 126 – 129) On October 5, 2020, Doctor Adametz advised the patient to be off work pending injection approval. (Cl. Ex. 1, P. 130)

On October 22, 2020, the claimant presented to Doctor Thomas Hart of Pain Consultants of Arkansas. The report provided Doctor Hart reviewed the MRI and opined that it was “quite impressive” at C7-T1, showing a disc bulge, protrusion, central to the right with significant recess and foraminal narrowing. Foraminal narrowing was also noted at C6-7, C5-6, and C4-5. Cervical epidural injections were scheduled at the Arkansas Surgical Hospital. (Cl. Ex. 1, P. 131 – 132)

On October 28, 2020, Doctor Hart provided a cervical epidural steroid injection. (Cl. Ex. 1, P. 133 – 134) On November 5, 2020, the claimant returned to Doctor Adametz, who again reviewed the claimant’s MRI and provided the four (4) disc abnormalities could cause right sided radicular pain (Cl. Ex. 1, P. 135 – 139) On December 2, 2020, the claimant again returned to Doctor Hart. The report provided most of the claimant’s pain

was on the right side and that he had about a fifty percent (50%) improvement, and a cervical epidural steroid injection was performed. (Cl. Ex. 1, P. 140, 141) On December 3, 2020, Doctor Adametz issued a work note that advised the claimant to stay off work until the follow-up appointment, which was scheduled on January 5, 2021. (Cl. Ex. 1, P. 142)

The final document in the medical records exhibit consisted of a report from the chiropractor that included photos of the impact damage on the cab of the tractor trailer on the driver's side and additional photos of the pickup that were provided by the claimant. The report provided for multiple issues involving the cervical spine as well as a sprain of the ligaments of the lumbar spine and strain of the muscles of the lumbar spine. Under conclusion, the report provided that the MRI established a cervical disc bulge. (Cl. Ex. 1, P. 143 – 149)

The claimant's Exhibit Two consisted of a five (5)-page non-medical exhibit for claim payments and prescriptions. The claimant's Exhibit Three consisted of a payment printout that provided the dates that the respondents have made payments.

### **DISCUSSION AND ADJUDICATION OF ISSUES**

In regard to the primary issue of compensability of the injury to the lumbar region of the lower back, the claimant has the burden of proving by a preponderance of the evidence that he is entitled to compensation benefits for the injury under the Arkansas Workers' Compensation Law. 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. Cavanaugh'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).

There is no disagreement that the claimant was involved in a work-related motor vehicle accident on March 20, 2020. The respondents accepted the cervical spine (neck injury) and provided medical care and paid TTD in regard to the cervical injury. The claimant contends that he also injured his lumbar region of his lower back at the same time, that the lumbar injury is work-related, and he is entitled to reasonable and necessary medical treatment for the lumbar region of the lower spine, plus additional TTD. The respondents contended that claimant's problems with the lumbar region of his lower spine were not work-related and therefore not compensable.

The claimant testified he was involved in a motor vehicle accident where a pickup crossed the center line and hit the driver side of the tractor-trailer he was driving, which injured his entire back. He notified his supervisor, who came to the accident scene, picked the claimant up, and took him for a drug test. A few weeks later, on April 13, the claimant, on his own, presented to chiropractor Doctor Christopher Burton at Pain Relief Chiropractic, who had treated the claimant in the past. The medical report for the visit provided that the claimant presented due to a motor vehicle accident and that he suffered from radiculopathy of the cervicothoracic region, muscle spasm of the back, generalized muscle weakness, sprain of the lumbar ligaments of the spine, strain of the muscle fascia and tendon at the neck level, sprain of the ligaments of the cervical spine, segmental and somatic dysfunction of the cervical region, and strain of the muscle, fascia, and tendon of the lower back. The report further provided that the claimant's chief complaint was of neck and low back pain, with a complaint of headache, loss of sleep, and stiffness in the

muscles of the posterior neck and cervical spine along with joint pain. From the testimony, it appeared that the claimant did not initially notify his employer of his visit to the chiropractor.

Two (2) days later, on April 15, 2020, the claimant presented to Concentra for the first time. This report provided that the claimant presented with a sore neck, lower back, and left knee. The x-ray provided no significant radiologic findings. Under impression, the report provided there was soft tissue swelling and no definite acute fracture was identified. The report further provided that the claimant could return to full work with full participation in essential job functions.

The claimant continued to present to both the chiropractor and Concentra for a period of time and continued to have various issues regarding his neck and back. The chiropractor continued to opine that the claimant suffered from manifestations of a sprain/strain of the cervical and lumbar spine and that “specific flexion adjustive procedures were administered to the lumbar spine.” On July 6, 2020, the claimant received an MRI of the **cervical** spine (emphasis added). Later, on August 4, 2020, the claimant first presented to Doctor James Adametz, who ordered physical therapy and a steroid pack. The report provided that the claimant presented with neck pain involving the cervical spine and found a cervical disc disorder with radiculopathy. At one point, Doctor Adametz opined that, due to the various issues of the spine (the records provided that he was reviewing the cervical spine), he would not recommend surgery due to the fact that it would be extremely difficult to resolve all of the issues. During this time, the claimant continued to see the chiropractor who performed “activator procedures” to the cervical, thoracic, and lumbar spine. The claimant continued to present to both Doctor

James Adametz and his chiropractor, Doctor Christopher Burton. Doctor Adametz referred the claimant to Doctor Thomas Pain Hart for pain management, with the first visit on October 22, 2020. Doctor Hart reviewed the claimant's MRI of the cervical region and opined that it was "quite impressive" at C7-T1. He later provided the claimant with cervical epidural steroid injections on multiple occasions. The final medical report of record was from the chiropractor, Doctor Christopher Burton, who opined that the claimant had multiple issues of the cervical spine, as well as sprain and strain of the ligaments and muscles of the lumbar spine.

Additionally, it must be noted that the claimant admitted that he had been involved in two (2) subsequent motor vehicle accidents where he had been rear-ended and injured his "tail bone". He also admitted to being treated by the same chiropractor for the injuries he suffered in the two (2) subsequent motor vehicle accidents and testified that the tail bone injury was separate from the work-related motor vehicle accident.

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).

Objective findings 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 the medical records clearly provided that the claimant was suffering substantial issues involving the cervical spine. Although there was no record of the claimant ever receiving an MRI of the lumbar spine, the chiropractor who initially saw the claimant prior to the later motor vehicle accidents opined in his report in regard to the initial visit about sprains and strains of the lower back. Additionally, the initial Concentra report also mentioned sore lower back. "Objective findings" are based on observable criteria perceived by someone other than the claimant. Continental Exp., Inc. v. Freeman, 66 Ark. App. 102, 989 S.W.2d 538 (1999). It is noted that a chiropractor is trained in techniques to detect strains, sprains, and spasms involving the lower back.

Further, a claimant is not required in every case to establish the causal connection between a work-related incident and an injury with an expert medical opinion. See Walmart Stores, Inc. v. VanWagoner, 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. Hail v. Pitman Construction Co. 235 Ark. 104, 357 A.W.2d 263 (1962). Further, the Arkansas Court of Appeals recently stated that there was no requirement under Arkansas law that a doctor, physical therapist, or other medical provider actually observe a patient having a muscle spasm before an employee's injury can be compensable. The court also provided that a doctor would not prescribe medications used for muscle spasms if he or she did not believe that muscle spasms were existent. See Melius v. Chapel Ridge Nursing Center, LLC, 2021 Ark. App. 61. In the present matter, the chiropractor, Doctor Christopher Burton, made objective findings as to strains and sprains of the lower back prior to the claimant being involved in the two (2) additional motor vehicle incidents where the claimant was rear-ended.

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 it grew out of or resulted from the employment. See Moore v. Darling Store Fixtures, 22 Ar. App 21, 732 S.W.2d 496 (1987) Further, 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).

The respondents questioned the claimant about failing to provide written notice to the respondent about the chiropractic treatment. It is noted that Ark. Code Ann. § 11-9-701 (b) provides that failure to give notice will not bar a claim if the Commission finds that

the employer had knowledge of the injury. This was clearly the case here, where the supervisor of the claimant showed up at the accident scene and took the claimant for a drug test. The claimant was not evaluated at that time for injuries that might have occurred as the result of the accident. The claimant had previously been treated by the chiropractor prior to the work-related motor vehicle accident, and when back issues arose after the accident, he initially and continually went to treat with the health care provider that had previously treated him.

Based upon the available evidence in the case at bar, there is no alternative but to find that the claimant has satisfied the burden of proof to show that he suffered an injury of the lumbar region of the lower back that was in fact work-related and compensable under the Arkansas Workers' Compensation Act. Consequently, he has established by a preponderance of the credible evidence that his lower back injury is the result of the incident that occurred on March 20, 2020.

In regard to the medical, the Arkansas Compensation Act provides that an employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. Stone v. Dollar General Stores, 91 Ark. App. 260, 209 S.W. 3d 445 (2005). 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. 263, 101 S.W.3d 252 (2003). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984). Here the health care provider

who initially examined the claimant after the work-related accident and prior to the later rear-end incidents noted that the claimant was suffering from sprain and strains of the lower lumbar region of his back. The claimant has continued to suffer from issues of the entire back and consequently the chiropractic treatment of the lower back is found to be both reasonable and necessary. Based upon this finding, the claimant has satisfied the burden of proof to show that he is entitled to the reasonable and necessary treatment of the lumbar region of the lower back and further, that the chiropractic treatment he had already received was reasonable and necessary.

In regard to temporary total disability (TTD), the claimant contended that he was entitled to additional TTD due to his lower lumbar back injury, from the date of September 22, 2020, up and through the date of November 5, 2020. TTD is that period within the healing period in which an employee suffers a total incapacity to earn wages. Arkansas State Highway and Transportation Department v. Brashears, 272 Ark. App. 244, 613 S.W. 2d 392 (1984). The claimant was initially taken off work by Doctor Adametz on September 1, 2020, for a few weeks. The claimant then returned to Doctor Adametz, as per the medical records, on September 29, 2020. The September 29 report by Doctor Adametz provided that the claimant would be released to driving only, but with no lifting over fifteen (15) pounds. The claimant testified that he felt that his driving was not safe. On October 5, 2020, Doctor Adametz advised the patient to be off work pending injection approval. The claimant received his first injection by Doctor Hart on October 22, 2020, with the second injection occurring on October 28, 2020. However, Doctor Adametz issued a work note on December 3, 2020, for the claimant to remain off work until the follow-up appointment that was scheduled on January 5, 2021. The claimant admitted that on

November 5, 2020, he was released to return to work light duty. Based upon the above evidence, the claimant has satisfied by a preponderance of the credible evidence that he is entitled to additional TTD for the period from September 22, 2020 up and through November 5, 2020.

Based upon the above findings, the claimant and his attorney are entitled to the appropriate legal fees as spelled out in Ark. Code Ann. § 11-9-715.

After weighing the evidence impartially, without giving the benefit of the doubt to either party, it is found that the claimant has satisfied the burden of proof that his claim of an injury to the lower lumbar back is compensable, that treatment of the lumbar region of the lower back is reasonable and necessary, and that the chiropractic treatment that he has already received in regard to the lumbar region of his lower back is reasonable and necessary. He is also entitled to attorney fees as spelled by the Arkansas Workers' Compensation Act. This award shall bear interest at the legal rate pursuant to Ark. Code Ann. § 11-9-809. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

**IT IS SO ORDERED.**

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**JAMES D. KENNEDY**  
**Administrative Law Judge**