

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G703605

COURTNEY Z. JOHNSON, CLAIMANT
EMPLOYEE

A & R MOBILE HOME SERVICE SUPPLY, INC., RESPONDENT
EMPLOYER

OWNERS INSURANCE COMPANY/AUTO RESPONDENT
OWNERS, INSURANCE CARRIER/TPA

OPINION FILED MARCH 4, 2022

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

Claimant represented by the HONORABLE WILLARD PROCTOR, JR.,
Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE RANDY P. MURPHY,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed August 3, 2021. The administrative law judge found that the claimant failed to prove he sustained a compensable injury. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. The Full Commission finds that the claimant proved he sustained a compensable injury. We find that the claimant proved he was entitled to reasonably necessary medical treatment and a period of temporary total disability benefits.

I. HISTORY

Courtney Johnson, now age 55, testified that he became employed with the respondents, A&R Mobile Home Supply, in 2010. Mr. Johnson testified that he installed air conditioners for the respondents and performed remodeling. The parties stipulated that the employment relationship existed at all pertinent times. The claimant testified on direct examination:

Q. Now, did an incident occur causing you to be injured on the job?

A. Yes, sir, it did.

Q. Okay. And when did it happen?

A. It – June the 3rd, on a Friday, of 2016.

Q. Okay. And could you tell us about what time it is that it occurred, if you recall?

A. It was around noon, somewhere around noon....I had to go put an air conditioner in in DeWitt, Arkansas that morning, and I was called when I was about done and they told me to meet the guys back up in Ward, Arkansas, because a customer had had a package unit, that it was an emergency because of the age and temperature that it was outside and that we needed to put it in now....

Q. Now, let's go back to June the 3rd of 2016 and if you will, just explain to the judge what happened on that day.

A. I came from DeWitt, Arkansas and when I got there the unit was not there yet, and we were sitting and waiting for the unit to pull up. The boss's son, Clinton McGough, pulled up in a red Dodge Ram truck 4-wheel drive with a four-ton package unit electric heat pump on the back of it.

Q. Now, let me stop you right there. Did the unit literally weigh four tons?

A. No, sir. It weighed probably close to a thousand....

Q. And then what happened?

A. Well, they tried to – David and – I mean Bob and Clinton got on top of the back of the truck and they attempted to push it but it didn't move, so me and David got – I got on which would be the left side and David got on which would be the right side and we kinda jolted it and they pushed on down. Well, when they pushed the unit down off the truck, it took it to the ground. David let it go on his end and it – I was – let it –

had the last bit of it and it – it got - it put the pressure on me. Well, the unit came on down and it cocked up in the air, so we continued to try and let him drive out from under it with the truck and when it sat down – when we got it probably almost in place, it – it – I had a pain go through my back like a – a whippin'....Just a sharp pain went down through my back, but I didn't know – at the time. I thought I had sprung my shoulder but it tore it.

David Powell testified that he had been employed with the respondents for 23 years, and that his position was H.V.A.C. technician.

The claimant's attorney examined David Powell:

Q. And do you recall an incident that happened in June of 2016 involving Courtney Johnson?

A. Yes, sir.

Q. Okay. And can you tell the court what it is that was occurring at the time?

A. We were changing out an air conditioner, a big package unit air conditioner, on the house at the time....

Q. And so can you just walk us through and tell the judge what happened that day?

A. The only thing I can remember – I know we was disconnecting the air conditioner, the old air conditioner, and I remember him getting shocked or somethin' on somethin' or another in there, and then I remember him jerkin' back.

Q. You say you remember him getting – who was getting shocked?

A. Courtney....

Q. You mean like electrically shocked?

A. Yes....And then it was after that that I remember him complaining about his back hurtin'.

Q. Okay. All right. Do you recall if this happened before or after the unit got off of the truck?

A. That was before.

Q. Okay. All right. All right. So did you all have any problems getting the unit off the truck?

A. Not that I remember, we didn't....I remember there were four of us there and we slid it off, and I don't remember

exactly how it went but I don't remember there being any trouble doing it....

Q. Then you said that you recalled, at some point, Courtney Johnson started to complain about his back being injured?

A. I was after I remember him gettin' shocked that I remember – I don't remember how long after, I just remember him sayin' somethin' about his back was hurtin'. ...

Q. When Courtney was complaining about back problems or problems with his back, did you offer to take him to the doctor or anything of that nature?

A. I didn't. I mean, I told him if he needed to go to the doctor, I mean, if he was hurtin' that bad, he needed to go – go to the doctor.

Robert Morse testified that he had been employed with the respondents for over 20 years, and that he performed H.V.A.C. and underpinning work. The claimant's attorney examined Robert Morse:

Q. Do you recall an incident that happened involving Courtney Johnson or do you have any recollection?

A. Yes....

Q. Can you tell us, generally, what were you all doing at that time?

A. Installing a package unit.

Q. Okay. And do you remember how the package unit got to you all?

A. It was from a pickup truck....

Q. And what happened, if you recall anything?

A. I helped them get the package unit off and – but I had another job to do and so I left after that.

Q. Okay. All right. Do you remember if anything happened to Courtney at the –

A. No, but he – he called me that night sayin' he had hurt his back.

Q. Okay. Did you observe anything that would indicate that he had hurt his back?

A. No....

Q. Okay. Do you remember if the – if he was at all injured at all during this process?

A. Not that I remember, no.

The claimant testified that he helped his co-workers install the air conditioning unit, and that he completed his workday on June 3, 2016. However, the claimant testified on cross-examination that he did not return to work for the respondents after June 3, 2016.

The claimant testified that his symptoms became acute on June 4, 2016, and that he treated at an Urgent Care Clinic that day, but there is no corroborating medical evidence of treatment on June 4, 2016. The claimant testified that he attempted to return to work for the respondents on June 6, 2016 but that he was physically unable to perform his employment duties.

According to the record, an MRI of the claimant's right shoulder was taken on June 9, 2016:

HISTORY: 49-year-old with fall one week ago with persistent right shoulder pain....

IMPRESSION: Small insertional tear distal supraspinatus tendon. Fairly extensive tendinopathy of the supraspinatus tendon is present.

Subcortical osseous cyst likely degenerative seen involving the greater humeral tuberosity. There is some reactive degenerative bone marrow edema felt to be present as well. Degenerative change and spurring involving the AC joint.

An MRI of the claimant's thoracic spine was also taken on June 9, 2016:

HISTORY: Back pain after a fall one week ago.

COMPARISON: Radiographs from October 11, 2014.

FINDINGS: The natural thoracic kyphosis is maintained and there is no scoliosis. The bone marrow maintains its normal high T1 signal and no compression fractures are identified.

The visualized portions of the spinal cord are normal in size and signal. No epidural hematoma is identified. There are minimal disc bulges at T5-6 and T6-7 but they do not cause spinal canal stenosis. The neural foramen are patent at every level.

IMPRESSION: Minimal thoracic spondylosis. No compression fractures.

The claimant treated with Dr. Michael Hussey at Arkansas Specialty Orthopaedics beginning June 29, 2016. The claimant wrote that an injury had occurred “At work a package unit slid (sic) down on me.” The claimant reported that he had injured his right shoulder and lower back. Dr. Hussey evaluated the claimant on June 29, 2016:

Courtney Johnson is a very pleasant 49-year-old right-hand-dominant gentleman here for evaluation of right shoulder and neck pain has been present for about a week now since he sustained a work-related injury when [an] air-conditioning unit [fell] and hit him injuring the right shoulder. He had shoulder neck pain and presented to St. Vincent Hospital emergency department where x-rays were taken as well as MRI scan of the neck and shoulder. He was referred to me for further evaluation. He was given hydrocodone and taking 2 pills per day. Currently pain is severe causing night pain. It radiates from the neck down to the shoulder all [the way] down to the arm and hand. He has noticed paresthesias in all fingers.... Shoulder exam demonstrates no obvious sign of trauma deformity or injury. There is diffuse palpation all throughout the shoulder with no focal points....There is focal tenderness along the midline posterior spine cervical with positive Spurling maneuver causing increased pain dominant neck and arm....

Review of MRI scan right shoulder demonstrates normal joint alignment present. No fracture seen. There is a very tiny anterior interstitial partial thickness supraspinatus tear, but otherwise intact.

Review of cervical MRI scan report demonstrates no fractures or dislocations seen. There is bolds (sic) of the disc at C5-6

and C6-7 level with osteophytes causing foraminal narrowing on the right side.

Dr. Hussey assessed “49-year-old right hand dominant male with injury to the right shoulder and neck causing #1 rotator cuff strain, #2 cervical spine radiculopathy.” Dr. Hussey planned conservative treatment which included referral to Dr. Vargas “for evaluation of cervical spine radiculopathy.” Dr. Hussey stated, “4. I do not see any surgical indications at this time, he may follow up as needed. He has been assured, that any strain of the rotator cuff will heal with time.” Dr. Hussey indicated on June 29, 2016 that the claimant could return to restricted work on July 6, 2016.

The claimant also treated with Dr. Mikhail Ivanovsky at Pain Treatment Centers of America beginning June 29, 2016. The assessment at that time was “Right shoulder pain,” “Lumbago,” and “Right leg pain.” The claimant was screened for various illegal substances at Pain Treatment Centers of America on June 29, 2016. Screening results dated June 30, 2016 indicated that the claimant tested positive for “Cocaine.” (The respondents do not contend that the accident occurring June 3, 2016 was “substantially occasioned by the use of illegal drugs” in accordance with Ark. Code Ann. §11-9-102(4)(B)(iv)(Repl. 2012)).

Dr. Hussey reported on July 20, 2016:

Courtney returns back to clinic today for reevaluation of right shoulder pain. He saw Alicia Bell for valuation cervical spine pain and was not found to have any pathology that would

need surgical intervention. The recommended conservative treatment for any possible cervical complaints. Apparently cervical MRI did show pathology at C4-5 and C5-6 level. Patient states he is no better after Medrol Dosepak still having significant neck and shoulder pain. He has not been able to work he states. Patient states that he needs to have surgery to get his shoulder fixed.

Dr. Hussey assessed “49-year-old male with work type injury, now with severe right neck and upper extremity pain and dysfunction. Different diagnosis includes #1 cervical spine injury versus #2 shoulder strain.” Dr. Hussey’s treatment plan included “3. Recommend continued nonoperative treatment for shoulder and upper extremity pain, as there is nothing that requires surgical repair.”

Dr. William L. Rutledge examined the claimant on August 9, 2016:

HISTORY OF PRESENT ILLNESS: Mr. Courtney Johnson is 50 years old. He has a multitude of problems. He has chronic pain in the right shoulder, right flank, lower back, and right hip. He was injured on the job in June when a package unit was being pushed off the truck and he was on the ground and caught the weight of it. This caused a tearing sensation and pulled muscles later on. He had pain in the right shoulder, right lower back, and right hip. He has not healed since. He has been seen by physicians including orthopedic surgery at Arkansas Specialty Orthopaedics and is requiring pain management with interventional procedures....MRI scan of the cervical area reveals shallow disc osteophyte complexes at C5-C6 with mild effacement of the right paracentral/ventral CSF and borderline mild central canal stenosis. There is also foraminal narrowing at C4-5 and C5-C6. He has pain with rotation of the neck and has a difficult time with head turning. This pain radiates to the mid back and right posterior shoulder. On MRI scanning of the right shoulder, there was insertional tear distal supraspinatus tendon with fairly extensive tendinopathy of the supraspinatus

tendon. There was subcortical osseous cyst likely degenerative seen involving the greater humeral tuberosity and some reactive degenerative bone marrow edema. This study was done in June of 2016.

SUBJECTIVE: Mr. Johnson was injured on the job back in early June. He suffered a cervical strain as well as injury to the right shoulder. He is seeing an orthopedic surgeon and had some type of injection in the right shoulder, but it is still hurting quite a bit. He also has spasms in his lower back from this injury. He has had tight muscle spasms lately. The neck pain radiates to the right shoulder and down the right arm. His lower back pain radiates to the gluteal region in the right SI region.

Dr. Rutledge's physical examination of the claimant showed among other things, "The lower back is tender with trigger point tenderness to the right of L4 and L5. There is decreased range of motion of the lumbar spine." Dr. Rutledge assessed "1. Cervical strain. 2. Lumbar strain. 3. Contusion to the right shoulder with rotator cuff injury." Dr. Rutledge planned conservative treatment.

Dr. Carl Covey, a physician at Pain Treatment Centers of America, corresponded with the claimant on September 20, 2016: "I find it necessary to inform you that I am withdrawing from further professional attendance of you. I will no longer be able to serve as your physician. The primary difficulty has been your failure to comply with your pain management contract and/or your persistent refusal to follow my medical advice and treatment." There was no indication in Dr. Covey's September 20, 2016

correspondence that his release of the claimant was related to illegal drug use.

Dr. Rutledge continued to provide follow-up treatment. The claimant was assessed with having “Muscle spasm of back” on October 27, 2016, November 16, 2016, December 21, 2016, and February 7, 2017. Dr. Rutledge’s follow-up assessment on March 15, 2017 was “1. Contusion to the right shoulder. 2. Rotator cuff injury, right shoulder. 3. Thoracic strain. 4. Lumbar strain. 5. Muscle spasms.”

Dr. Rutledge wrote a “Final Report” on April 13, 2017:

Mr. Courtney Johnson was 50 years old and presented here on 08/09/16 with severe pain in the right shoulder, right flank, lower back, and right hip. He was injured on the job in June when a package unit was being pushed off of a truck and he was on the ground and caught the weight of it. This caused a tearing sensation in his muscles and he had pain in the right shoulder and lower back on the right side and right hip. He has since had problems and has seen an orthopedic surgeon at Arkansas Specialty Orthopedics. He was requiring some pain management and interventional procedures. Because of persistent symptoms, he saw me for an evaluation on 08/09/16....

Mr. Johnson required narcotic analgesics along with anti-inflammatory meds. He continued follow-up in treatment by his orthopedic specialist as well. Mr. Johnson was unable to work due to these problems and remain so. He has chronic pain necessitating narcotic analgesics and pain with use of his right upper extremity. He is right hand dominant.

By 04/13/17, I feel Mr. Johnson has reached maximum medical improvement. He has received steroid injections to the right shoulder and to the spine on several occasions. These have only been transiently helpful and he remains with chronic pain and dysfunction. He continues to experience headaches as well as right hip pain. Mr. Johnson’s

reasonable training and job experience is that of heating and air business and manual type work. He simply cannot do this and in fact [is] physically impaired due to these injuries. I would anticipate his future medical cost to be \$2500-\$5000 per year because of this injury. He will need chronic pain management office visit and periodic courses of physical therapy from time-to-time.

Dr. Rutledge's impression was "1. Cervical strain. 2. Thoracic strain. 3. Lumbar strain. 4. Rotator cuff injury with right shoulder tendinopathy. 5. Contusion to the right hip."

Over three years after Dr. Rutledge's April 13, 2017 Final Report, Dr. Owen L. Kelly corresponded with the respondents' attorney on May 27, 2020 and stated in part:

ASSESSMENT: Motor vehicle accident on or around 6/3/16.
DISCUSSION: 1. After reviewing the record, I cannot objectively relate any of the injuries to the June 3, 2016 incident. MRI's reveal degenerative changes and no evidence of acute injury. The shoulder MRI is consistent with expected changes noted in someone with a history of manual labor. This history is noted in Dr. Rutledge's final report note. The spine MRI's noted no evidence of acute process or injury. There is no correlation between the accident and these findings. The MRI's appear to be performed 6 days after the alleged accident. There would be some expected injury findings on these exams if an injury occurred. If any true injury occurred, it would have been a mild sprain/strain. Once again, there are no findings of injury.
2. Maximum medical improvement – I have reviewed the note per Dr. William Rutledge regarding maximum medical improvement. The final report given by Dr. Rutledge was in April 13, 2017. The initial injury was June 3, 2016. I would believe maximum medical improvement would have been reached by 8-12 weeks post injury if there was a sprain/strain. The maximum medical improvement date of April 13, 2017 is inaccurate and prolonged.

3. Impairment rating – there is not any impairment rating that can be assigned to Mr. Johnson as it relates to the motor vehicle accident.
4. Medical treatment – I would necessitate the physical therapy treatments if at all for the accident.
5. I reviewed the notation regarding future expenses with the costs of \$2500 to \$5000 per year. I anticipate no sequelae or treatment as it relates to the accident in question.

A pre-hearing order was filed on November 4, 2020. The parties agreed to litigate the following issues:

1. Whether the claimant sustained a compensable injury to his lower back on June 3, 2016, and is entitled to appropriate benefits associated therewith, inclusive of reasonably necessary medical care and related expenses, temporary total disability benefits for the period of June 4, 2016 through April 13, 2017, permanent partial disability benefits, and
2. Attorney's fees related to controverted indemnity benefits.

The parties stipulated that the respondents controverted the claim.

A hearing was held on May 11, 2021. Clinton McGough testified that he was currently part-owner of the respondent-employer, A&R Mobile Home Service Supply. The respondents' attorney examined Clinton McGough:

- Q. You understand we're here today regarding a workers' compensation claim filed by Courtney Johnson?
- A. Yes, sir....
- Q. He's got an alleged incident of June 3, 2016. You're aware of that now, right?
- A. Yes, sir....
- Q. And you were present on that job?
- A. Yes, sir.
- Q. And what did you do on that job?
- A. I arrived shortly after David and Courtney got there, with the package unit in the back of my truck, and Bob came and

we all unloaded it, and got the other one out of the way, and then unloaded it, and then loaded that one back up in my truck, and then I – I know I stayed and I know Courtney was there, and I think David was there, and we just hooked it back up....

Q. And did you unload that unit?

A. Yes, sir.

Q. With the help of the others, including Courtney?

A. Yes, sir.

Q. Was there anything that happened that was eventful or out of the routine or norm during that unloading?

A. No, sir.

Q. Okay. Were you aware of any injury or any problem reported by Courtney or any of the other employees?

A. By the time I had gotten there I remember distinctly a little bit about them talking about him getting shocked by a loose wire hanging or something. I don't remember but –

Q. Was that the only incident you were aware of?

A. Yeah, that's the only thing I remember.

The claimant's attorney cross-examined Clinton McGough:

Q. And with regards to your information regarding how it is that you all were aware, were you aware of his injury? How did you become aware of it?

A. I really don't know if we ever were made aware that his back was injured other than as far as injured to the point that he cannot work. I mean, other than his back was hurt but, I mean, my back has been hurt on jobs and, you know, you take some Tylenol and, you know, you get better....

Q. You specifically testified just a minute ago that his back was hurt. You said, "My back is hurt."

A. Yeah. I mean, whenever I was at the job, I mean, he was mentioning that he hurt his back. He blew it off and he continued to work, and he worked the rest of the time....

Q. You testified that you knew that his was hurt. Is that correct?

A. That he, at least, hurt his back, yes.

Q. Okay. And did you understand and did you know, as well, that he had hurt his back on the job?

A. I was at the job so yeah, I guess, I mean, sure, yeah.

The respondents' attorney re-examined Clinton McGough:

Q. Let me ask you this, Clinton: When you delivered that truck and helped unload that package unit were you aware of any problem with Mr. Johnson and his back?

A. No.

Q. All right. Were you aware of any incident other than your hearing he got shocked?

A. No.

Q. Okay. After that period of time, when Mr. Johnson continued working and what you knew then, were you aware of any problem with his back related to an on-the-job injury?

A. No....

Q. Courtney never told you he got injured on the job?

A. No.

Q. He never reported to you a work-related problem?

A. No, he didn't.

Q. You said he had back problems. Did you know how, or when, or where he hurt his back?

A. No.

The claimant's attorney again cross-examined Mr. McGough:

Q. When I asked you, Mr. McGough, a question about whether or not you understood, and I think the record will reflect I asked you whether or not you understood that Mr. Johnson had an injury on the job, and you answered yes. Do you recall that?

A. Yes, I was aware he got hurt. I was not aware of the severity of an issue. I mean, that's the biggest thing, I guess, I just don't know. I mean, it's kinda – about – I mean, you can – in our line of work you're going to get injuries as far as crawling under a house and your back's hurting the next day, but you take some Tylenol that night and you keep goin' back to work.

Q. Okay.

A. So I didn't – yeah, I might have heard something but, I mean, you know, you take some Tylenol, you'll be back the – I mean, he was back, you know, he came back and whatnot. So yeah, I knew he said, "Hey, my back is hurtin'," but it wasn't, "Man, my back's hurtin' and I can't go to work." You know? That's my – yeah, that's how I'll put it, I guess....

Q. So do you agree that Mr. Johnson told you that his back was hurting?

A. I would say I knew it before we even unloaded the package unit. I would say that, if anything, it was before I got there, so it wouldn't have nothing to do with the package unit situation.

An administrative law judge filed an opinion on August 3, 2021 and found that the claimant failed to prove he sustained a compensable lower back injury on June 3, 2016. The administrative law judge therefore denied and dismissed the claim. The claimant appeals to the Full Commission.

II. ADJUDICATION

Ark. Code Ann. §11-9-102(4)(Repl. 2012) provides, in pertinent part:

(A) "Compensable injury" means:

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

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2012). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012).

The employee must prove by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Repl. 2012). Preponderance of the evidence means the

evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

An administrative law judge found in the present matter, “(2) The Claimant has failed to prove, by a preponderance of the evidence, that he sustained a compensable lower back injury on June 3, 2016[.]” It is the duty of the Full Commission to enter findings in accordance with the preponderance of the evidence and not on whether there is substantial evidence to support the administrative law judge’s findings. *Roberts v. Leo Levi Hospital*, 8 Ark. App. 184, 649 S.W.2d 402 (1983). The Full Commission enters its own findings in accordance with the preponderance of the evidence. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348 (1990).

The credibility of witnesses and the weight to be given their testimony are matters exclusively within the province of the Commission. *Johnson v. Democrat Printing & Lithograph*, 57 Ark. App. 274, 944 S.W.2d 138 (1997). The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Jackson v. Circle T. Express*, 49 Ark. App. 94, 896 S.W.2d 602 (1995). An administrative law judge’s findings with regard to credibility are not binding on the Full Commission. *Roberts, supra*.

In the present matter, the Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained a compensable injury. The claimant testified that he became employed as a laborer for the respondents in 2010, and that he sustained an accidental injury on June 3, 2016. The claimant testified that he felt “a sharp pain” in his back while assisting other employees with moving a heavy air conditioning unit from the back of a truck. Two co-employees, David Powell and Robert Morse, corroborated the claimant’s testimony that an injury occurred. David Powell testified that he thought the claimant had “shocked” his back. Robert Morse testified that the claimant contacted him on the evening of June 3, 2016 and stated that “he had hurt his back.” Clinton McGough testified that he was also present on the morning of June 3, 2016 and, like David Powell, thought that the claimant had “shocked” his back. Clinton McGough gave conflicting and inconsistent testimony with regard to whether the claimant injured his back at work. Yet the Full Commission notes Mr. McGough’s testimony on re-cross examination, “I was aware he got hurt.”

The probative medical evidence of record also corroborated the claimant’s testimony. Dr. Hussey noted on June 29, 2016 that the claimant had been injured while unloading “a package unit.” Dr. Rutledge’s treatment notes directly corroborated the claimant’s testimony. Dr.

Rutledge reported on August 9, 2016, "He was injured on the job in June when a package unit was being pushed off the truck and he was on the ground and caught the weight of it....He had pain in the right shoulder, right lower back, and right hip." Dr. Rutledge's assessment included "2. Lumbar strain." Dr. Rutledge also assessed "Muscle spasm of back" on several occasions, including October 27, 2016, November 16, 2016, December 21, 2016, February 7, 2017, and March 15, 2017. The Full Commission finds that the physician's assessment of "muscle spasm" was based on a physical examination of the claimant and was causally related to the June 3, 2016 accidental injury. It is well-settled that a physician's observation of muscle spasm can constitute an objective finding establishing a compensable injury. *Continental Express, Inc. v. Freeman*, 339 Ark. 142, 4 S.W.3d 124 (1999).

The Full Commission recognizes Dr. Kelly's correspondence dated May 27, 2020, in which Dr. Kelly opined among other things that "there are no findings of injury." The Commission has the authority to accept or reject a medical opinion and the authority to determine its medical soundness and probative force. *Green Bay Packaging v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 692 (1999). It is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). In the present

matter, the Full Commission finds that Dr. Rutledge’s opinion is entitled to more evidentiary weight than Dr. Kelly’s opinion. We find based on Dr. Rutledge’s reports and the other corroborating evidence that the claimant sustained a compensable lumbar sprain on June 3, 2016.

The Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained a “compensable injury” to his back in accordance with Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2012). The claimant proved that he sustained an accidental injury causing physical harm to the body. The claimant proved that the injury arose out of and in the course of employment, required medical services, and resulted in disability. The claimant proved that the injury was caused by a specific incident and was identifiable by time and place of occurrence on June 3, 2016. The claimant also established a compensable injury by medical evidence supported by objective findings, namely, Dr. Rutledge’s credible reports of muscle spasm in the claimant’s back. We find that the claimant was a credible witness with regard to the June 3, 2016 accidental injury, and that the claimant’s testimony was entitled to more evidentiary weight than Clinton McGough’s testimony.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved he sustained a compensable injury to his back on June 3, 2016. We find that the medical treatment of record following the

compensable injury was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). There are currently no recommendations for additional medical treatment in connection with the compensable injury. We find that the claimant remained within a healing period and was totally incapacitated from earning wages beginning June 4, 2016 and continuing until April 13, 2017, the date Dr. Rutledge assessed maximum medical improvement. The claimant therefore proved that he was entitled to temporary total disability benefits from June 4, 2016 until April 13, 2017. *See Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981).

The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Repl. 2012). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Palmer dissents

DISSENTING OPINION

I respectfully dissent with the majority finding that the claimant suffered a compensable lower-back injury during a specific incident on June 3, 2016. After conducting a *de novo* review of the record in its entirety, I find that the claimant lacks credibility; there were no objective findings of an injury to claimant's lower back; although muscle spasms "can" constitute an objective finding of injury, standing alone are not the type of injury that completely disables an otherwise healthy worker or the type of injury that lingers for years and; all but one of the medical providers suggest that Claimant does not have a lower-back injury.

Although the Commission is not bound by the ALJ's findings regarding credibility of witnesses, I find that the medical records do not corroborate Claimant's testimony regarding an injury to his lower back. One example of the several inconsistencies in Claimant's testimony is that Claimant testified that he had no back problems before his June 3, 2016 workplace incident; however, Claimant told his medical providers that he had back pain as early as 2014.

Claimant testified that he was treated on June 4, 2016—the day following his workplace incident—however, as pointed out by the ALJ, this is not corroborated by the medical records.

The testimony of Claimant’s coworkers contradicts Claimant’s account of how he allegedly injured his lower back. The coworker who helped Claimant unload the unit testified that Claimant did not appear to be injured during the incident.

In September 2016, Claimant was “fired” by Dr. Carl Covey (his pain-management doctor) for “fail[ing] to comply with [his] pain-management contract” and his “persistent refusal to follow [Dr. Covey’s] medical advice and treatment.” This was shortly after Claimant tested positive for cocaine. It is unclear whether this was the specific reason his pain-management doctor terminated treatment, but it does diminish Claimant’s credibility.

There are no objective findings to support a finding of a lower-back injury. A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). Objective findings are those findings that cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i). Complaints of pain are not considered objective medical findings. Ark. Code Ann. § 11-9-102(16)(A)(ii)(a). The burden of proving a specific-incident compensable

injury is the employee's and must be proved by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4)(E)(i).

On June 9, 2016, Claimant had MRI scans of his neck and right shoulder—no objective findings of an injury to lower back.

On June 29, 2016, Claimant was treated by Dr. Michael Hussey for injuries to his neck and right shoulder. Dr. Hussey released Claimant to return to restricted work on July 6, 2016. Again, Claimant was not treated during this visit for any injury to his lower back and this visit produced no objective findings of an injury to Claimant's lower back.

Near the end of July 2016, Claimant returned to Dr. Hussey. Again, there are no objective findings of a lower-back injury in the medical records from this visit.

In August 2016—nearly five months after his workplace incident—Claimant was treated by Dr. William Rutledge. Under the heading "SUBJECTIVE," Dr. Rutledge notes that Claimant **reported** having muscle spasms in his lower back. From this point forward, these subjective, unobserved muscle spasms show up on Dr. Rutledge's assessment. Based on Claimant's stated history, and subjective complaints of pain during the examination, Dr. Rutledge diagnosed Claimant with a lumbar strain.

There is nothing in the record that indicates Dr. Rutledge actually observed any spasms himself. Finding that Dr. Rutledge actually observed the muscle spasms requires impermissible speculation. Moreover, to find that these muscle spasms, which were documented under “SUBJECTIVE” heading, were objective findings stares the face of reason.

Even if the muscle spasms were observed during the examination (which they were not), it was not until five months after the workplace incident that muscle spasms were even mentioned in the medical records. It is not likely that the workplace incident caused an injury that did not evince itself in any objective way for five months.

Given Claimant’s lack of credibility, the lack of objective findings, and the bevy of medical providers (all but Dr. Rutledge) who found no objective findings of a lower-back injury, I would find that Claimant failed to prove with objective medical findings that he sustained a lower-back injury on June 3, 2016. Accordingly, for the reasons set forth above, I must dissent from the majority opinion.

CHRISTOPHER L. PALMER, Commissioner