

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H303428**

JOYCE JOHNSON, EMPLOYEE

CLAIMANT

**BOOKER T. WASHINGTON ELEM. SCHOOL,
SELF-INSURED EMPLOYER**

RESPONDENT

**ARKANSAS SCHOOL BOARD ASSN.,
CARRIER/THIRD-PARTY ADMINISTRATOR**

RESPONDENT

OPINION FILED FEBRUARY 26, 2025

Hearing before Administrative Law Judge, Steven Porch, on January 14, 2025, in Little Rock, Arkansas.

Claimant was represented by Mr. Gregory R. Giles, Attorney at Law, Texarkana, Arkansas.

Respondents were represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A full hearing was held on this claim on January 14, 2025. A prehearing telephone conference took place on July 2, 2024. A prehearing order was entered on that date and subsequently entered into evidence, with amendments by the parties, as Commission Exhibit 1. The parties' stipulations are set forth.

STIPULATIONS

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employer/employee/carrier relationship existed among the parties on May 2, 2023, when Claimant allegedly sustained compensable injuries to her back.
3. Respondents have controverted this claim in its entirety.
4. The parties stipulate to Claimant receiving max rates meaning a temporary total disability rate of \$835.00 and a permanent partial disability rate of \$626.00 per week.

ISSUES

The parties have identified the following issues¹ to be adjudicated:

1. Whether Claimant sustained a compensable aggravation of a pre-existing injury to her back.²
2. Whether Claimant is entitled to reasonable and necessary medical treatment from May 3, 2023, to July 5, 2024.
3. Whether Claimant is entitled to Temporary Total Disability benefits from September 1, 2023, to April 23, 2024.
4. Whether Claimant is entitled to Temporary Partial Disability benefits from June 1, 2023, to August 30, 2023.
5. Whether Claimant is entitled to Permanent Partial Disability benefits, specifically a 10% impairment rating to the body as a whole associated with the injuries sustained to her back.
6. Whether Claimant's attorney is entitled to a controverted attorney's fee.

All other issues are reserved.

CONTENTIONS

Claimant's Contentions: The Claimant contends that she sustained compensable injuries.

The primary injury is the aggravation of a pre-existing condition of her low back which has subsequently required surgery. Claimant is entitled to temporary total disability benefits from the date she began missing work. Claimant also contends that Respondents should be ordered to pay the medical treatment received to date and additional medical treatment. Claimant is entitled to

¹ The Claimant had motioned for modification of issue 1 to include only the aggravation of the back injury as the only alleged compensable injury, issue 2 to include the dates May 3, 2023, to July 5, 2024, issue 3 changed the February 20, 2024, date to April 23, 2024, and the inclusion of issue 4 on Temporary Partial Disability benefits. Claimant's oral motion was granted.

² The primary issue, based on testimony, involves the specific injury to Claimant's lower back. More specifically, the L4-L5 region.

attorney fees as provided by law.

Respondents' Contentions: Respondents contend that Claimant did not suffer a compensable injury on or about May 2, 2023. Considering this, it is Respondents' position that Claimant is not entitled to benefits associated with her alleged injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Therefore, after a thorough consideration of the facts, issues, the applicable law, and the evidentiary record, 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 this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. The Claimant has not proven that she has sustained an aggravated compensable spinal injury with objective findings.
4. Based on my findings of no compensability, the remaining issues of reasonable and necessary medical treatment, temporary total disability benefits, temporary partial disability benefits, permanent partial disability benefits, and a controverted attorney's fee are moot and will not be addressed in this opinion.

CASE IN CHIEF

Summary of Evidence

The record is made up of Claimant's Exhibit 1, Medical Records, that consists of 75 pages, Respondents' Exhibit 1, medical records, that consist of 91 pages, and Commission Exhibit 1, Pre-Hearing Order filed July 2, 2024, that consists of 5 pages. Forms AR-C, AR-2, AR-1, Claimant's post-hearing brief, and Respondents' post-hearing brief are all blue-backed and made a part of this record. The Claimant was the only witness testifying in the full hearing.

Claimant was employed as a music teacher for the Respondent/Employer. On May 2, 2023, Claimant was pushed into a classroom door, that she was holding open for other students to exit,

by a disgruntled third-grade student who was just disciplined by her. The student pushed Claimant in her back causing the left side of her body to hit the door. The Claimant did not fall to the ground when pushed into the door by the student. The Claimant testified that she felt pain in her left hip and down her left leg. Claimant stated that she had to resume using her cane once she got off work on the day of the incident.

The Claimant has a long history of back issues with associated pain. According to the Claimant, in 1992-93 she was involved in a car accident and injured her upper back. Trans. p. 43, lines 24-25 – p. 44 lines 1-21. The Claimant also testified that she fell out of a chair while decorating her classroom thus again injuring her back in the year 2011. *Id.* The Claimant had an MRI on November 9, 2011, that shown some mild degenerative changes, but no significant disc herniation at the L4-L5 level. See CL Ex. 1, p. 341.

On November 17, 2022, Claimant met with Dr. Eric Joseph at CHI St. Vincent Primary Care University for tingling in her back. CL Ex. 1, p. 2. According to her history, the Claimant was present for an evaluation concerning a diffuse paresthesia in both of her legs. *Id.* The Claimant reported that she continued to have diffuse pain and tingling and wants treatment. *Id.* She also reported no recent injury, trauma, or change in her symptoms during her visit with Dr. Joseph. Claimant also has a diagnosis of complex regional pain syndrome in her right upper extremity. CL ex. 1, pp. 8-9. This syndrome was responding well to medical management. *Id.*

On February 23, 2023, Claimant met with Dr. Adam Smith at OrthoArkansas complaining about right side hip pain. CL Ex. 1, p. 22. The pain was in the buttocks and would radiate down the back of the leg. *Id.* Claimant stated that the pain was made worse by prolonged walking or standing, as well as, getting in and out of chairs, and walking up and down stairs. *Id.* Claimant

further stated that she would occasionally get electrical shock type of pain in her leg. *Id.* Dr. Smith referred her to an orthopedic surgeon. *Id.*

Claimant saw Dr. Stephen Paulus on March 8, 2023, at OrthoArkansas. CL Ex. 1, pp. 23-28. Dr. Paulus referred the Claimant to a physical therapist to assist her with mechanical support and stabilization of her spine. *Id.* Claimant was instructed to contact the clinic after one week if the Claimant is not experiencing appropriate symptomatic benefits. *Id.*

The Claimant next visited Rebekah Long, a Physical Therapist at OrthoArkansas, on March 17, 2023. CL Ex. 1, 32-34. The Claimant reported low back pain with activity. *Id.* She further reported radicular symptoms down both legs to the knee and occasionally the foot. *Id.* The Claimant stated that she has been experiencing her symptoms consistently for about six weeks prior to her visit with the physical therapist; and randomly over the past two years. *Id.* Claimant had a follow-up visit with Dr. Paulos on April 11, 2023. CL Ex. 1, pp. 53-58. Dr. Paulos ordered Claimant an MRI of her lumbar spine since she reported radicular leg pain during two sessions of her physical therapy. *Id.* Claimant next had an MRI of her lumbar spine on April 12, 2023, twenty days before her alleged work-related incident. CL Ex. 1, p. 59.

The April 12, 2023, MRI was done at OrthoArkansas and reviewed by Dr. Jay Martin, of Kanis-Reader, in Little Rock, Arkansas. Dr. Martin's impression of the MRI is as follows:

1. **Multilevel degenerative disc disease.**
2. **A broad-based central protrusion of the L4-5 disc is superimposed on generalize bulging of the disc. Central spine canal stenosis at the L4-5 level due to abnormal disc facet arthropathy and thickening of the ligamentum flavum. Right facet arthropathy mildly effaces the right side of the thecal sac.**
3. **There is a narrowing of the right lateral recess at the L4-5 level, with impingement on the descending right L5 nerve root.**

CL Ex. 1, p. 59.

On April 28, 2023, the Claimant received a right and left L5-S1 epidural injection, approximately four days before the work-related incident. CL Ex. 1, pp. 70-71. The work-related

incident occurred May 2, 2023.³ In response to the work-related incident, the Claimant saw Dr. Scott Carle on May 3, 2023, and was diagnosed with a pelvic contusion and sprain of a ligament in her left knee.⁴ Cl Ex. 1, pp. 81-82. Dr. Carle also prescribed the Claimant pain medication. *Id.* Claimant followed-up with Dr. Carle to recheck her back on May 19, 2023. CL Ex. 1, pp. 177-187. At that time, Dr. Carle assessed Claimant with lumbar radiculopathy and referred her to an orthopedic specialist. *Id.* Dr. Carle also ordered an MRI on May 19, 2023, at Chenal MRI. CL Ex. 1, pp. 174-176. The result of this MRI, as it specifically relates to Claimant's L4-L5, is as follows:

- 1. L4-L5: Mild disc bulge and right paracentral to right foraminal disc herniation with moderate spinal canal stenosis, severe mass effect on the right lateral recess, severe right and moderate left neural foraminal narrowing.**

CL Ex. 1, p. 175

The May 19, 2023, MRI report also noted, as to Claimant's L4-L5, a moderate bilateral facet joint arthropathy. *Id.* There was also a thickening of the bilateral ligamentum flavum with an estimated diameter of approximately three millimeters. *Id.* Dr. Stephen Paulus did a comparison between the May 19, 2023, MRI and the April 12, 2023, MRI and found that Claimant's L4-L5 was "unchanged." Resp. Ex. 1, pp. 70-71. On June 7, 2023, Dr. Carle was asked by letter from Lisa Wigginton, a Workers' Compensation Claims Adjuster, about whether there were any objective findings concerning Claimant's back injury. Resp. Ex. 1, p. 73. Dr. Carle responded, in writing, by stating "none." *Id.* Dr. Carle further opined that there were "negative studies for

³ Both sides agree that a specific incident occurred involving a third grader pushing the Claimant into a door. However, there is disagreement that the episode produced objective findings.

⁴ I was not asked to rule on the compensability and reasonable treatment of these injuries. Though the compensability of these injuries, at best, appear clear. I will only be addressing the alleged back injury.

fracture or internal injuries.” Dr. Carle concluded by stating that Claimant had “no measurable aggravation to pre-existing spine disorder.” *Id.*

The Claimant next visited Dr. Bernard Crowell, Orthopedic Specialist, on July 27, 2023, for assistance with her back pain when it was decided that surgery, a hemilaminectomy and discectomy of the L4-L5, would be the best course of treatment. CL Ex. 1, pp. 252-256. Dr. Crowell performed this surgery on August 11, 2023. CL Ex. 1, pp. 264-266. The Claimant testified that the surgery helped her with her pain.

After some healing time, Claimant underwent another MRI on February 9, 2024, by Chenal MRI. CL Ex. 1, pp. 333-334. Dr. William W. Davenport reviewed the results of the MRI scan and noted the following as it relates to Claimant’s L4-L5:

L4-L5: Interval right laminectomy. Interval right discectomy. Enhancing postoperative granulation tissue at the laminectomy site and in the right lateral recess. Residual bulging annulus and bilateral facet hypertrophy with moderate bilateral foraminal stenoses.

CL Ex. 1, pp. 333-334. Dr. Davenport’s impression, in regard to Claimant’s low back injury, post operation, was a moderate bilateral foraminal stenoses at her L4-L5-S1. *Id.*

Due to multiple MRI’s being involved in this claim, an independent medical evaluation was obtained, by Respondents, from Dr. Wayne Bruffett on June 21, 2024. CL Ex. 1, pp. 341-346. Dr. Bruffett reviewed pre-work-related injury MRIs dated November 9, 2011, and April 12, 2023. Dr. Bruffett also reviewed post-work-related injury MRIs dated May 19, 2023, and February 9, 2024. Dr. Bruffett also interviewed the patient and examined her in addition to reviewing all the pertinent imaging. *Id.*

Dr. Bruffett opined although the work-related incident of May 2, 2023, caused some worsening pain for the Claimant, he would say to “a reasonable degree of medical certainty based on the objective imaging and her history of pre-existing complaints and treatments for this

problem, specifically an injection 4 days prior to the event, the surgery that was performed and the subsequent treatment was more than 51% related to her pre-existing disc herniation stenosis and radiculopathy that emanated from the L4-L5 motion segment.” *Id.* Dr. Bruffett further opined that he saw “no objective evidence of an injury as a consequence of the incident that occurred on May 2, 2023, at work.” *Id.* Dr. Bruffett also stated that Claimant is at maximum medical improvement and there is no applicable impairment rating that can be linked to her work-related incident. *Id.* Dr. Bruffett concluded his opinion by stating that he has not placed any restrictions on Claimant because of her work-related injury. *Id.*

On January 6, 2025, Dr. Ryan Fitzgerald, Radiologist, also gave his findings and opinions regarding the provided records and imaging for the Claimant. Resp. Ex. 1, pp. 80-86. Dr. Fitzgerald reviewed medical documents and imaging before and after the May 2, 2023, work-related incident. *Id.* Dr. Fitzgerald opined that the “MR imaging obtained in May 2023, was negative for any objective evidence of an acute traumatic injury.” *Id.* Dr. Fitzgerald concluded that the “lumbar treatments provided subsequent to the subject event were more likely than not attributable to Ms. Johnson’s (Claimant) long-standing lumbar degenerative disease and independent of the subject event.” *Id.*

Adjudication

- A. Whether Claimant sustained a compensable aggravation of a pre-existing injury to her back by specific incident.

Under the Arkansas Workers’ Compensation Act, the employer takes the employee as the employer finds her, and 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). Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012), an aggravation must be proven by a preponderance of the evidence. 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).

A claimant’s testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). 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.*

Claimant has not proven by the preponderance of the evidence that she sustained an aggravated compensable injury to her low back. Claimant has undergone a series of MRIs concerning her back both pre and post work-related incident. Many doctors have compared the pre and post work incident MRI records and have ultimately reached a united conclusion of no objective findings.

For example, Dr. Stephen Paulus did a comparison between the May 19, 2023, MRI and the April 12, 2023, MRI and found that Claimant's L4-L5 was "unchanged." Resp. Ex. 1, pp. 70-71. On June 7, 2023, Dr. Carle when asked about objective findings concerning Claimant's alleged low back injury responded by stating "none." Resp. Ex. 1, p. 73. Dr. Carle further opined that there were "negative studies for fracture or internal injuries." Dr. Carle concluded his opinion by stating that Claimant had "no measurable aggravation to pre-existing spine disorder." *Id.* I credit Dr. Paulus and Dr. Carle's opinion.

Furthermore, an independent medical evaluation was obtained, by Respondents, from Dr. Wayne Bruffett on June 21, 2024. CL Ex. 1, pp. 341-346. As previously mentioned, Dr. Bruffett reviewed pre-work-related injury MRIs dated November 9, 2011, and April 12, 2023. He also reviewed the alleged post-work-related injury MRIs dated May 19, 2023, and February 9, 2024. Dr. Bruffett interviewed the patient and examined her in addition to reviewing all the pertinent imaging. *Id.*

Dr. Bruffett opined although the work-related incident of May 2, 2023, caused some worsening pain for the Claimant, however, he would go on to say to "a reasonable degree of medical certainty based on the objective imaging and her history of pre-existing complaints and treatments for this problem, specifically an injection 4 days prior to the event, the surgery that was performed and the subsequent treatment was more than 51% related to her pre-existing disc herniation stenosis and radiculopathy that emanated from the L4-L5 motion segment." *Id.* Dr. Bruffett also opined that he saw "no objective evidence of an injury as a consequence of the incident that occurred on May 2, 2023, at work." *Id.* He further stated that Claimant is at maximum medical improvement and there is no applicable impairment rating that can be linked to her work-related incident. *Id.* Dr. Bruffett concluded his opinion by stating that he has not placed any

restrictions on Claimant because of her work-related incident. *Id.* I credit Dr. Bruffett's independent medical evaluation report.

Finally, on January 6, 2025, Dr. Ryan Fitzgerald, Radiologist, gave his findings and opinions regarding Claimant's alleged injury. Resp. Ex. 1, pp. 80-86. Dr. Fitzgerald reviewed medical documents and imaging before and after the May 2, 2023, work-related incident. *Id.* Dr. Fitzgerald opined that the "MR imaging obtained in May 2023, was negative for any objective evidence of an acute traumatic injury." *Id.* Dr. Fitzgerald concluded that the "lumbar treatments provided subsequent to the subject event were more likely than not attributable to Ms. Johnson's (Claimant) long-standing lumbar degenerative disease and independent of the subject event." *Id.* I credit Dr. Fitzgerald's report.

Considering the above, I do not ignore -rather I find it unpersuasive- Claimants argument that those who reviewed the MRIs, mainly Dr. Bruffett, needed to also look at the clinical impressions of Dr. Carle along with Claimant's operative report. When Dr. Carle was directly asked about Claimant's objective findings of a spinal injury, he concluded there were none. Res. Ex. 1, p. 73. And as previously mentioned, Dr. Carle further opined that Claimant had "no measurable aggravation to pre-existing spine disorder." *Id.* Thus, his opinion fell in line with Dr. Bruffett's opinion. Moreover, Dr. Bruffett had access to the post operative MRI of February 9, 2024. If the operative report was critical in his analysis of Claimant's alleged back injury, he would have noted such in his report. Therefore, I find that the operative report was not critical to the overall analysis of whether there were objective findings of an aggravated low back injury in this circumstance.

Based on the reports of Dr. Paulus, Dr. Carle, Dr. Bruffett, and Dr. Fitzgerald, all whom I have credited, I find that Claimant has failed to prove by the preponderance of the evidence that

she has objective findings of an aggravated work-related injury to her lower back; thus, her claim must fail. *See Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

MISCELLANEOUS ISSUES

Based on my previous findings that Claimant has failed to prove she has objective findings of an aggravated work-related injury, the remaining issues regarding reasonable and necessary medical treatment, temporary total disability benefits, temporary partial disability benefits, permanent partial disability benefits, and a controverted attorney's fee are moot and will not be addressed in this opinion.

CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law set forth above, the parties shall act consistent with this opinion.

IT IS SO ORDERED.

Hon. Steven Porch
Administrative Law Judge