

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. H002123**

**SANDRA B. KIMBLE, EMPLOYEE**

**CLAIMANT**

**ARKANSAS DEPARTMENT OF TRANSPORTATION,  
EMPLOYER**

**RESPONDENT**

**PUBLIC EMPLOYEE CLAIMS DIVISION  
ARKANSAS INSURANCE DEPARTMENT,  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION FILED FEBRUARY 23, 2022**

Hearing before Administrative Law Judge, James D. Kennedy, on the 19<sup>th</sup> day of January 2022, in Mountain Home, Arkansas.

Claimant is represented by Rick Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondents are represented by Robert Montgomery, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on the 19<sup>th</sup> day of January 2022, and at the time of the hearing, the parties announced that the issues before the Commission on the date of the hearing was compensability of a back injury, reasonable and necessary medical treatment in regard to the injury, and attorney fees, with all other issues reserved. 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 October 8, 2019, when the claimant alleges that she sustained a work-related injury to her back. There was no objection to these stipulations.

The claimant's and respondents' contentions are all set out in their respective responses to the Pre-hearing Questionnaire and made a part of the record without objection. The witnesses were the claimant, Sandra Kimble, and Stanley Risley, the claimant's supervisor at ARDot. 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 October 8, 2019.
3. That the claimant has failed to satisfy the required burden of proof to show that she sustained a compensable work-related injury to her back on October 8, 2019.
4. That, consequently, all remaining issues are moot.
5. 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 two (2) exhibits that were admitted without objection: (1) twenty-one (21) pages of medical records; (2) the deposition of the claimant. The respondents submitted medical reports which consisted of nineteen (19) pages, which were admitted without objection and also a

second documentary exhibit which consisted of fifteen (15) pages that was admitted without objection .

The claimant testified that she was fifty-eight (58) years old at the time of the hearing and had worked for the respondent for almost twenty-five (25) years. She was injured on or about October 8, 2019, but was not exactly sure of the exact date. Her job required her to stir a type of chemical, Beet 55, that's applied to the roads defrost. There was a containment wall around where the chemical was stored and mixed and you had to climb up on top of the wall and then jump inside, like a pen. "Well, I jumped over the wall, and when I did, when I jumped down from there I heard something in my back pop and my legs went to burning. And I thought I had pulled my sciatic nerve is what I thought I did." The claimant went ahead and stirred the mixture, crawled back over the wall, and then went to the doctor the next day. The doctor first treated the claimant for an injury to her sciatic nerve, but later performed an MRI that showed that she had a disc that bulged which made it so she could not work. The claimant stated that she received physical therapy for about eight (8) weeks. (Tr. 6 - 8) She confirmed that the Form AR-N referred to October 7<sup>th</sup>. (Tr. 9)

The claimant stated that after her injury, she told Stan Risley, the Area Maintenance Supervisor of Baxter County for ARDot, who then filled out the paperwork in regard to her injury. She did not fill out the papers she signed, due to the fact that ARDot had a system where the company nurse filled out part of the paperwork and then the employee signed it. She was not aware that the paperwork indicated she did not have a work-related injury (Tr. 10) The claimant testified that she was instructed she would be better off filing the claim on her disability from work insurance, and this was what she did.

She first received six (6) months short term disability. She then obtained two (2) doctor statements, one (1) providing that she could not work again, and one (1) providing that she could only work two (2) hours, with frequent breaks. She was then placed on permanent disability. (Tr. 11) She also stated that she was aware that there could be an offset in regard to her disability insurance and how it affected her workers' compensation claim. Her bilateral hip pain, low back pain, left lower chin pain were associated with the injury when she jumped over the retaining wall. (Tr. 12)

The claimant further testified that Doctor Gocio was her neurosurgeon and he placed her on Flexeril and that her family doctor had placed her on tramadol. When the pain gets really bad, she takes hydrocodone. She was currently drawing long-term disability and going to doctors. (Tr. 13) In regard to her deposition, she testified that she did not remember stating to her supervisor that she did not want to file a workers' compensation claim, but she did think that her supervisor suggested filing a short-term disability claim. (Tr. 14)

Under cross examination, the claimant testified that the morning after the incident, she met with her supervisor, Stanley Risley, and told him that she thought that she had injured her sciatic nerve. She stated she did not think about a bulging disc. (Tr. 15) She admitted she had previously had problems with her sciatic nerve. (Tr. 16) She also admitted she had sciatica and back pain previously that had caused her to visit a doctor, where she received an injection. The claimant also admitted that she was asked if a workers' compensation claim needed to be started. (Tr. 17) The claimant also agreed that she had admitted in her deposition that Mr. Risley had asked if they needed to fill out some workers' compensation papers and she had stated not at that time due to the fact

that she wanted to find out what was wrong with her. She also admitted to going to see Doctor Hagaman on October 8<sup>th</sup>. (Tr. 18) She thought that the incident happened on October 7<sup>th</sup> and she went to the doctor on the 8<sup>th</sup>. She also recalled talking to Doctor Hagaman about what had happened. (Tr. 19) When questioned, she admitted she had told him she hurt her back. She was then questioned about Doctor Hagaman's medical report that provided that the claimant did not remember any "precipitating event or injury." The claimant testified that she told Doctor Hagaman about jumping off the retainment wall and did not know why it was not in the report. She then stated that she did not remember him asking how she hurt herself. She stated that she did not remember telling Doctor Hagaman she did not recall any precipitating event. She also admitted she had been treated at the Little Rock Diagnostic Clinic about three (3) months prior to the incident. "I knew something was probably work with me, but it turned out to be a deficiency, and they put me on some shots and I'm doing better." (Tr. 20, 21) The claimant admitted the report provided she had a numbness and tingling in her extremities. She also admitted that three (3) months later, she was saying there was the incident at the retaining wall. She also admitted she told Mr. Risley that she did not want to file a workers' compensation claim and at that time and began filing out the papers for FMLA. She also admitted that she continued to work off and on after October of 2019, and worked until her doctor told her to not go back to work. (Tr. 22)

The claimant also admitted she saw Doctor Gocio and that no surgery had been indicated or suggested yet, but she had been told by Doctor Bradshaw that her problem would get worse. She also admitted she thought that she had taken FMLA paperwork to Doctor Hagaman. She thought the respondents had sent information to Doctor Hagaman.

(Tr. 23) The claimant was questioned about Doctor Hagaman's response in regard to the FMLA leave, which provided that the claimant's injury was not work-related, and she responded she was not aware he had checked that. The claimant admitted she continued to see Doctor Hagaman for several months and saw Doctor Gocio twice. (Tr. 24)

The claimant was also questioned about telling Doctor Hagaman in April of 2020, about seven (7) weeks after the date of the claimed work-related incident, that her pain had started about four (4) weeks earlier and her response was "No." She went on to state that it was her testimony that she had told Doctor Hagaman she had jumped off the wall and hurt her back. (Tr. 25)

The claimant was also questioned that after filling her FMLA leave paperwork, she put in her application for retirement the following year in 2020, and her response was "My back, I couldn't work. They were putting me off on leave and I needed to do something. I mean, I can't just, after six months your short-term disability would run out, so I called Retirement to see what I could do." (Tr. 26) The claimant also admitted she suffered from arthritis and deteriorated discs and that she filed her workers' compensation claim in April of 2020, following the accident. (Tr. 27, 28) The claimant admitted she contacted the company nurse, as required, on April 16, 2020. She did not remember going to Mr. Risley or anyone else in regard to filing a workers' compensation claim at that time. (Tr. 29) She also admitted to filing a previous workers' compensation claim a few years earlier and was aware of the procedure in regard to filing a claim. (Tr. 30)

On redirect, the claimant stated she thought her problems were going to be temporary and she would receive something so she would not have to go through all the paperwork for workers' compensation. (Tr. 31) The claimant was asked if she knew that

even if she did not want to file a workers' compensation claim, an incident report needed to be filed and her response was "Yes, I think so." She went on to state she didn't tell them to not file an incident report. Additionally in the past, she was able to pick up a ninety-four (94) pound bag of concrete. (Tr. 32, 33)

Under recross examination, the claimant testified that her back hurt when she went across the wall, and hurt while she hooked everything up, but she just thought that she had sprained a muscle. She admitted she had sciatic nerve problems in the past, had received a shot, and was better two (2) weeks later. (Tr. 36)

On further direct examination, the claimant stated that she had never felt or heard her back pop previously. She admitted to previous pain in her back, and she did not know at the time that her back problem was not just wear and tear. (Tr. 37) The wall she jumped from at the time of the incident came up to about her straddle. (Tr. 38)

The respondents called Stanley Risley who was a supervisor and had worked at ARDot for thirty-one (31) years. The claimant worked for him. (Tr. 41) He testified the claimant "did not come to me and say anything about hurting her back that day." He explained the retaining wall in question went around the beet juice and brine tank to contain a possible spill. (Tr. 42) He thought the wall was about three and a half (3.5) foot tall and agreed that the claimant had to frequently go over the wall, as part of her job, and stir the material in the beet juice tank because it concentrated and soaked to the bottom of the tank. (Tr. 43) He also stated he did not recall having a conversation with the claimant in regard to her injury. He did state as follows:

The only thing that I recall is one day Sandi had come in to the office and she had, she was kind of limping along, or like she had hurt something. And I asked her, I said, "Sandi, did you hurt yourself on the job? Did you hurt yourself out here?"

And she said, “No Stanley, I’ve told you once, what’s wrong with me didn’t happen out here on the job.” (Tr. 44)

The statement occurred after the date of the incident involving the containment wall. (Tr. 45) He also admitted that the claimant did come to him for FMLA assistance. Additionally, he had previously filled out workers’ compensation paperwork and was familiar with the process. (Tr. 46) He denied he told the claimant at any point to not file a workers’ compensation claim. He also denied telling the claimant to put in for short- or long-term disability, rather than filing a workers’ compensation claim. (Tr. 47) He stated he did not provide the claimant with the Form AR-N, but that it would have probably been delivered from the District headquarters. (Tr. 48)

Under cross examination, Mr. Risley testified the claimant was a good employee. (Tr. 49) He denied filling out the paperwork for short- and long-term disability, stating that was through the district office. (Tr. 50) He also agreed that the claimant’s description of work duties was correct and the claimant had a hard job, just as every job with the department of transportation. He was specifically asked if it was possible the claimant might have mentioned the containment wall injury at any time and was that a possibility and his response was “No, sir. No, sir. Cause I don’t recall, don’t remember anything said about that.” A follow up question asked are you saying you absolutely know without question she never even mentioned anything - - and Mr. Risley responded, “That is correct, yes, sir.” He went on to state that it would not be uncommon for the claimant to be out on the containment wall with no other person around, but that the first time he was aware of the incident was when the Form AR-N was filed. (Tr. 51, 52)



The claimant submitted twenty-one (21) pages of medical records without objection. The claimant presented to Doctor Gocio on January 8, 2020, with a complaint of low back pain, left leg pain, and bilateral hip pain. The report provided the claimant stated she injured herself in November 2019, when she jumped over a containment wall at work where she injured her low back. The report provided under assessment the claimant suffered from a bulging lumbar disc and lumbar facet syndrome. (Cl. Ex. 1, P. 1 – 3) The claimant then returned to Doctor Gocio on March 6, 2020, for a follow-up. This report provided the claimant had returned to work with permanent restrictions and had a chronic condition in her lower back. It went on to provide under plan, that the claimant could continue to work with permanent restrictions of sedentary activity. (Cl. Ex. 1, P. 4 – 5)

The claimant presented to MedExpress on April 16, 2020, and the report provided the claimant came in with back pain due to an injury at work. She was previously treated by her PCP, Doctor Hagerman, and then referred to Neurosurgery Doctor Gocio. (Cl. Ex. 1, P. 6, 7) She presented to Doctor Mark Bradshaw on October 2, 21, 27, and 29 of 2020, was prescribed tramadol for lower back pain, and received a Toradol injection on October 29, 2020. (Cl. Ex. 1, P. 8 – 20)

The claimant also introduced the claimant's deposition consisting of sixty-seven (67) pages into the record without objection. In her deposition, she admitted to having a previous workers' compensation claim involving both legs that she described as "tarsal tunnel syndrome" in 2003 or 2004, which caused a numbness in both feet and legs and which went away after surgery. She also admitted to having carpal tunnel surgery about the same time. (Cl. Ex. 2, P. 20, 21) The claimant testified in her deposition that after she

injured herself when she jumped off the retaining wall, she told her “boss” that she had probably sprained something and she thought that it happened around October 8<sup>th</sup>. (Cl. Ex. 2, P. 24) The claimant also testified in her deposition that she went home on the day of her injury. (Cl. Ex. 2, P. 29) She decided to file a workers’ compensation claim while in Doctor Gocio’s office where she was told that since the injury occurred at work, it was a workers’ compensation claim. (Cl. Ex. 2, P. 44) The deposition also contained a report of injury from the Company Nurse dated April 16, 2020, which provided the claimant was injured on October 7, 2019, where she injured her lower back area (trunk), and she was suffering from lower back pain, pain down her left leg, and numbness in her left foot. (Cl. Ex. 2, P. 60 – 63)

The respondent submitted nineteen (19) pages of medical records that were admitted into the record without objection. The first report provided that the claimant presented to the Little Rock Diagnostic Clinic on July 23, 2019, with a history of pain, numbness and tingling of the upper and lower extremities. An EMG was performed in regard to the right arm and leg with an additional study of the contralateral left sural sensory nerve, and it provided that the study was consistent with a mild generalized sensory and motor polyneuropathy. (Resp. Ex. 1, P 1, 2)

The claimant presented to Doctor Hagaman on October 8, 2019, with low back pain. She stated that her current episode of pain started yesterday, and she does not recall any precipitating event or injury. (Resp. Ex. 1, P. 3 – 5) The claimant returned to Doctor Hagaman on October 25, 2019 and the report provided that the claimant was evaluated for low back pain and the current episode started three (3) weeks ago, and the claimant did not recall any precipitating event or injury. (Resp. Ex. 1, P. 6 – 8)

On December 17, 2019, a Report of Medical Examiner was provided which stated that there was partial disability and a chance of neuropathy recovery. (Resp. Ex. 1, P. 9 – 11)

The claimant returned to Doctor Hagarman on April 30, 2020. The report provided that the follow-up visit was covered under workers' compensation. The report stated the claimant suffered from intervertebral disc disorders with radiculopathy of the lumbar region noted. It further provided the claimant stated that the pain started four (4) weeks ago and she does not recall any precipitating event or injury. (Resp. 1, P. 12 – 14) The claimant again returned to Doctor Hagarman on August 18, 2020. This report again provided that the claimant suffered from intervertebral disc disorders, and it was a chronic but persistent problem with an acute exacerbation. She stated that the current episode started four (4) weeks ago. The MRI showed diffuse degenerative changes with some narrowing at L2–3. The report also provided that the patient does not remember the cause of the injury. (Resp. 1, P. 15 – 18)

The respondent also submitted fifteen (15) pages of additional documents that were admitted without objection. A FMLA check list was prepared on October 28, 2019. (Resp. Ex. 2, P. 1, 2) A certificate for FMLA was issued on October 31, 2019, signed by Doctor Hagarman. (Resp. Ex. 2, P. 3 – 6) The claimant filed an application for retirement on January 8, 2020. (Resp. Ex. 2, P. 7) On January 14, 2020, the claimant made a request for disability. (Resp. Ex. 2, P. 8)

On April 20, 2020, the claimant filed a Form AR-C, which stated the claimant was injured when she jumped off of a containment wall and felt pain in her lower back. (Resp. Ex. 2, P. 9) The Form AR-N signed by the claimant was also filed on April 22, 2020, as

well as the Form AR-N acknowledgement filed on the same date. (Resp. Ex. 2, P. 10 – 12)

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

In regard to the primary issue of compensability regarding the lower back injury, the claimant has the burden of proving by a preponderance of the evidence that she is entitled to compensation benefits for the injury under the Arkansas Workers' Compensation Law. In determining whether the claimant has sustained her 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).

Here, the claimant, who was fifty-eight (58) years old at the time of the hearing, admitted that she had previously received injections due to suffering from sciatica and back pain, and had been treated approximately three (3) months prior to the work-related incident at the Little Rock Diagnostic Clinic, where a report dated July 23, 2019, provided that the claimant presented with a history of pain, numbness, and tingling of the upper and lower extremities. The claimant also admitted she had a previous workers' compensation claim that involved numbness in both her feet and legs that went away after surgery.

Under Arkansas Workers' Compensation law, it is clear an employer takes the employee as it finds her and employment circumstances that aggravate preexisting conditions are compensable. Heritage Baptist Temple v. Robinson, 82 Ark. App. 460,

120 S.W.3d 150 (2003). However, 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).

An injury for which the claimant seeks benefits must be established by medical evidence supported by objective findings which 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). Additionally, it is noted that the 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 Wal-mart Stores, Inc. v. VanWagner, 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 S.W.2d 263 (1962)

Here, the claimant admitted that she suffered previous issues involving numbness in her extremities. She testified that she told both her supervisor, Stan Risley, and Doctor Hagerman about suffering a work-related lower back injury when she jumped off of the retaining wall on or about October 7<sup>th</sup> or 8<sup>th</sup>, 2019. Her supervisor, whose testimony was convincing, testified that, “The only thing that I recall is one day Sandi had come into the office and she had, she was kind of limping along, or like she had hurt something. And I asked her, I said, ‘Sandi, did you hurt yourself on the job? Did you hurt yourself out here?’ And she said, ‘No Stanley, I’ve told you once, what’s wrong with me didn’t happen out here on the job.’” Under cross examination, Mr. Risley denied that the claimant mentioned the retainment wall injury to him and further testified that he was not aware of the claimed incident until the Form AR-N was filed.

The medical reports from Doctor Hagarman dated October 8<sup>th</sup> and October 25<sup>th</sup>, 2019, both provided that the claimant was evaluated for low back pain and the claimant did not recall any precipitating event or injury in regard to her back problem. The report by Doctor Hagarman dated April 30, 2020, provided that the claimant suffered from intervertebral disc disorders and radiculopathy which started four (4) weeks earlier and that the claimant did not recall any precipitating event or injury. A report from Doctor Hagarman dated August 18, 2020, which referred to an MRI which showed diffuse

degenerative changes with some narrowing at the L2–3, also provided that the claimant did not remember the cause of the injury.

A compensable injury is one that was the result of an accident that arose in the course of her employment and that grew out of or resulted from the employment. See Moore v. Darling Store Fixtures, 22 Ar. App 21, 732 S.W.2d 496 (1987) Based upon the available evidence in the case at bar, there is no alternative but to find that the claimant has failed to satisfy the required burden of proof to show that her lower back injury was a work related injury and consequently all other issues are moot.

Based upon the evidence available, and after weighing the evidence impartially, without giving the benefit of the doubt to either party, it is found that the claimant has failed to satisfy the required burden of proof to show that she suffered a compensable work-related injury to her lower back on October 7<sup>th</sup> or the 8<sup>th</sup> 2019. Consequently, all other issues are moot.

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**