BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H402081

NAKIA LINDSAY, EMPLOYEE	**CLAIMANT**
VS.	
FORT SMITH PUBLIC SCHOOLS , EMPLOYER	**RESPONDENT**
ARKANSAS SCHOOL BOARD ASSN./ INSURANCE CARRIER/TPA	**RESPONDENT**

OPINION FILED NOVEMBER 4, 2026

Hearing before Administrative Law Judge, James D. Kennedy, on the 13TH day of October 2026, in Fort Smith, Arkansas.

Claimant is represented by Mathew J. Ketchum, Attorney at Law, of Fort Smith, Arkansas.

Respondents are represented by Guy Wade, Attorney at Law, of Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 13th day of October 2026, to determine the issue of compensability of a lumbar spine injury which claimant contends is work related, medical treatment, and attorney fees. The respondents controverted the claim in its entirety and additionally raised lack of notice of an injury as a defense. 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 May 20, 2022, the date of the claimed injury in question.

The claimant' and respondent's contentions are all set out in their respective responses to the Pre-hearing Questionnaire and made a part of the record without objection. The claimant did not appear and testify at the hearing. The respondent called one witness, Dennis Siebenmorgan, the Director of Transportation for the Fort Smith Public Schools Transportation Department.

The claimant contended that he was injured on May 20, 2022, while driving a bus for the respondent employer and was rear-ended at an intersection while waiting on an ambulance to proceed by. He was seen the next day at Arkansas Chiropractic Group for continuous neck and low back pain and was treated with manipulation, evaluation, and therapy. He continued treatment with Arkansas Chiropractic Group until he reached maximum medical improvement.

The respondents contended that the claimant did not report an injury within the course and scope of his employment and instead, denied any injury. Subsequently, and without notice to his employer the claimant apparently obtained treatment on his own and did not follow up and report any injury to his employer. As a result, respondents are not responsible for any treatment and the claimant did not sustain a compensable injury. The claimant continued to work until August of 2023, when he voluntarily let work due to an unrelated medical condition and is currently receiving SSD benefits. The respondents had requested dismissal of the claim, and the claimant objected, now claiming payment for the unauthorized medical treatment. The respondents contend that the claimant's claim should be denied and dismissed.

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 only witness, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704.

FINDINGS OF FACT AND CONCLUSSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That an employer/employee relationship existed on May 20, 2020, the date of the claimed injury.
3. That the claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable lumbar spine injury on May 20, 2020.
4. Additionally, claimant failed to provide notice to the respondents that he had sought medical treatment until filing a Form AR-C on the date of March 22, 2024, which was well after he had received any medical treatment of record, and respondents are also not responsible for any medical treatment of record pursuant to A.C.A. §11-9-701.
5. That all remaining issues are moot.
6. 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 and respondent both submitted medical records that were admitted without objection. Additionally, both parties submitted documentary evidence that was also admitted without objection.

Since the claimant did not appear nor call any witnesses but was ably represented by his attorney, the respondents called the first and only witness, Dennis Siebenmorgen, the Director of Transportation for the Fort Smith Public Schools, who had been in that position for seven or eight years and been with the district for 27 years. He was working as the Director of Transportation at the time of the bus accident involving the claimant on May 20th, 2022, and testified he went to the scene of the accident on that date. He stated claimant was a contracted school bus driver who ran routes in the morning and evening on a daily basis. Mr. Siebenmorgen was shown the police report (Respondent's Non-medical on page 1) and a couple of pictures that he admitted taking (Respondent's Non-medical on pages 18,19) which showed the back of the bus following the accident and the vehicle that struck the back of the bus. He agreed that the picture of the back of the bus showed only a few scratches on the bumper and that the police report provided there did not appear to be any damage to the back of the bus. Mr. Siebenmorgan added that the bus and the claimant went on and finished the route on the day of the accident. (Tr. 5 – 8)

Mr. Siebenmorgan further testified that he had talked to the claimant at the accident scene who told him that he was not injured and stated, "I just felt a little bump" "in the back of the bus." Additionally, the claimant drove the bus all the next week on his regular route, with the last day of school being the 27th of May, and he had the opportunity to see the claimant during that time period and he did not recall the claimant making any complaints. He added that a procedure was maintained by the respondents for reporting a workers' compensation injury and it did not occur. It was the respondent's policy regarding a workers' compensation injury to send the worker to Mercy Occupational and

not to Elite Chiropractic. Mr. Siebenmorgan was also questioned about the Form C that was not filed until March of 2024, and he responded that he was not aware of a workers' compensation claim involving the claimant until that time, which was about a year and ten months after the accident and was not aware of the claimant having any issues related to the accident on May 20th, 2022. (Tr. 9 -11)

On cross examination, Mr. Siebenmorgan testified claimant told him at the time of the accident that he was not injured, and he did not recall the claimant ever saying he was injured. He was not aware that the claimant had started treatment with Arkansas Chiropractic Group until the Form C was filed nearly two years later. He added that the claimant had still been driving the bus. At this point both sides rested. (Tr. 12, 13)

The claimant's medical exhibit consisted of 11 pages of medical, all from the Arkansas Chiropractic Group. Claimant initially presented to Arkansas Chiropractic Group on June 1, 2022, and received numerous x-rays of his spine and shoulder. The report provided that immediately following an automobile accident on May 20, 2022, the claimant complained of headaches over his entire head, muscle spasms and neck stiffness on both sides, upper back pain and stiffness, low back pain and stiffness, with low back spasms, and shoulder pain on the left with left shoulder stiffness. The care plan provided the claimant would be treated with chiropractic adjustments. Under objective findings, the report provided palpation of the complete spinal region noted a measure of muscle spasms. A level of muscle hypertonicity was found in the spinal region. "Muscle hypertonicity at muscle hypertonicity on the left was revealed on examination. Tenderness was elicited on the tenderness." (Cl. Ex. 1, P. 1, 2)

Claimant returned for treatment on June 3, 2022, and was treated with manipulation to the cervical region, the upper thoracic region, the lumbar region, and SI joint. Unattended electrical muscle stimulation was administered to the complete spinal region and the left shoulder. Manipulation was applied to the left shoulder. The claimant received mechanical traction to the complete spinal region and was given a tens unit, and hot packs were applied. The claimant returned for additional treatment on June 6, 2022, and moderate amount of muscle spasms in the complete spinal region were noted. The claimant was treated with manipulation to the cervical, upper thoracic, and lumbar region, along with the SI joint. The claimant then again returned on June 13, 2022, and the report provided that objective findings of moderate muscle spasms were revealed in the complete spinal region with a moderate level of muscle hypertonicity noted. The claimant again returned on June 15, 2022; June 21, 2022; June 23, 2022; June 27, 2022; June 29, 2022; and July 6, 2022, for the last of eleven visits. The final report provided for muscle spasms evident in a moderate degree affecting the complete spinal region. (Cl. Ex. 1, P. 7 - 10)

The final medical report included a “Prescription Form – Letter of Medical Necessity” from Dr. John McKinney for a tens unit which provided the tens unit was reasonable and necessary and related to a workers compensation auto accident and dated June 3, 2022. (Cl. Ex. 1, P. 11)

Claimant’s Exhibit 2 consisted of 17 pages of an Arkansas Motor Vehicle Crash Report. The report provided that the date of the crash was May 20, 2022, and that the police arrived at the scene at 3:34 p.m. There was no apparent injury in the school bus and the condition of the driver was “apparently normal.” The vehicle that hit the rear of

the bus was a Nissan/Datsun Xterra and suffered an estimated $3000.00 in damages and airbags did not deploy in either vehicle. The driver of the bus and all the passengers stated they were ok and the bus did not appear to have any damage to the rear of the vehicle. (Cl. Ex. 2, P. 1 – 17)

The respondents also submitted six pages medical records without objection. The records provided that the claimant had presented to Elite Chiropractic Center on March 3, 2021, for bilateral posterior neck pain, mid back pain, and lower back pain, all noted as severe. Under objective findings, tenderness was noted in the cervical, thoracic, and lumbar regions bilaterally with tenderness more noted on the right side of the lumbar region. Tenderness was noted in the right sacroiliac and increased muscle tone was noted in the right gluteus. (Resp. Ex. 1, P. 1 – 3) The claimant again returned to the same clinic March 6, 2021, and the report provided that the overall assessment of the claimant's condition had not changed, and that treatment included electrical stimulation of the cervical region with spinal manipulation at C5 on the left, T8 on the right, and L2 on the left and in the sacrum on the right, traction in the sacrum region, and diathermy in the lumbar region. (Resp. Ex. 1, P. 4 – 6)

Respondents also submitted 40 pages of non-medical that was admitted into the record without objection. The first 17 pages consisted of the Arkansas Motor Vehicle Crash Report that was referred to in the claimant's documents and admitted into the record. (Resp. Ex. 2, P. 1 – 17) Respondents also submitted two photographs that the testimony of record provided were taken by the Transportation Director for the respondent. The photographs showed the rear of the school bus with the possible

damage consisting of a scratch and additionally showed the vehicle that hit the bus with a crumpled hood and damaged grill. (Resp. Ex. 2, P. 18, 19)

A Form AR-C dated March 22, 2024, provided that the claimant was driving a school bus on May 20, 2022, when the bus was hit from behind and that the claimant was suffering from neck and low back pain. (Resp. Ex. 2, P. 20)

A recorded statement of the claimant taken by an adjuster on May 25, 2024, which provided that the statement was taken with the claimant's attorney present, and that the claimant had left the school district on August 23, 2023, leaving due to social security disability, and that the disability was not the result of the accident, but due to end stage renal failure. (Resp. Ex. 2, P. 20 – 23) In regard to the bus accident, the claimant stated he had come to a complete stop when the bus was hit. He thought there were 19 children on the bus plus an aid at the time. He stated that his injuries were his back with a little neck pain, and he notified the school immediately. He was not injured at the time and told his boss that he was not injured. He also testified that he was contacted by a lady named Amy who suggested he go to a chiropractor. The claimant's attorney provided that Amy was part of a husband-and-wife team in Fort Smith that decided to practice law without a license, were prosecuted for it, and plead guilty. The claimant's attorney became involved in this matter when his firm was handling the claimant's personal injury case, the claimant mentioned that he was injured at work, and that he consequently saw the claimant. The claimant admitted suffering from chronic back pain prior to the accident in May of 2022, and that he had received treatment by a medical doctor with the Arkansas Pain Clinic, starting in 2017 or 2018. The claimant also stated that when Amy contacted him, she recommended he go to the Elite Chiropractor. (Resp. Ex. 2, P. 24 -30)

DISCUSSION AND ADJUDICATION OF ISSUES

In regard to the primary issue of compensability, the claimant has the burden of proving by a preponderance of the evidence that he is entitled to compensation benefits for the injury to his lower back. 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. Cavananugh'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 facts are undisputed. The claimant was employed by the respondents as a bus driver on May 20, 2022, the date of the claimed injury. The bus was struck in the rear while stopped and photographs of the accident scene show that at the most, the bus received a scratched bumper. The Fort Smith Police Department Accident Report provided the bus was not damaged, the claimant was not injured, and no air bags deployed in the two vehicles involved in the accident. The bus later finished its route on the day of the accident while still driven by the claimant, who told his supervisor that he was not injured. The claimant had previously suffered neck and lower back problems and had been treated at the Arkansas Pain Clinic in 2017 or 2018 and had also received earlier chiropractic treatment. The claimant never told his supervisor that he suffered neck and low back pain due to the accident and continued to work for the respondent employer until he was forced to leave his employment due to an unrelated health issue in August of 2023. No notice of injury was ever provided to the respondents until the filing of a Form

AR-C on March 22, 2024, and this apparently happened due to a chain of events that was initiated when a women named Amy called the claimant and suggested he obtain chiropractic treatment.

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 A.C.A. §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. A.C.A. §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 and available testimony provide that the claimant had suffered from neck and lower spine issues in the past and had stated at the time of the accident that he was not injured. He completed his route on the day of the accident with the bus he was driving at the time of the accident and continued to work following the accident, until the end of the school year. He then drove a bus until August of 2023, until he was forced to quit driving due to an unrelated health issue. He never informed the respondent employer that he had sought any type of medical treatment until the filing of a Form AR-C approximately a year and ten months after the accident.

Under Arkansas Workers' Compensation law, it is clear 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). Further, a claimant is not required in every case to establish the casual 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 A.W.2d 263 (1962). With that said, the workers' compensation claimant bears the burden of proving the compensable injury by a preponderance of the evidence. A.C.A. §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 Ark. App 21, 732 S.W.2d 496 (1987) 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). 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 the claimed injured to his lower spine on May 20, 2022, is in fact work related and compensable under the Arkansas Workers' Compensation Act. Additionally, it is found that even if the claimant had suffered a work- related injury, the respondent would not be responsible for the only medical of record pursuant to A.C.A. §11-9-701, due to no notice of injury being provided to the respondent until March 22, 2024.

After weighing the evidence impartially, without giving the benefit of the doubt to either party, there is no alternative but to find that the claimant has failed to prove by a preponderance of the credible evidence that his claim for a lower spinal injury on May 20, 2022, is a compensable claim under the Arkansas Workers' Compensation Act, and that the claimant failed to provide any type of notice to the respondents until March 22, 2024, and that consequently the respondents are also not responsible for any of the medical of record due to the lack of notice even if the claim was found to be compensable. 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