BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H109317**

TIMOTHY R. MIDDLETON, Employee
CLAIMANT

LEW THOMPSON & SON TRUCKING INC., Employer RESPONDENT

CCMSI, Carrier RESPONDENT

OPINION FILED **APRIL 6, 2023**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Springdale, Washington County, Arkansas.

Claimant represented by MARK ALAN PEOPLES, Attorney, Little Rock, Arkansas.

Respondents represented by GUY ALTON WADE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On January 23, 2023, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on June 16, 2023, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the hearing, the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employee/employer/carrier relationship existed on November 4, 2021.
3. The compensation rates are $736.00 for temporary total disability and $552.00 for permanent partial disability.

At the hearing, the parties agreed to litigate the following issues:

1. Compensability regarding claimant's head, throat, neck, back and shoulders.

2. If compensable, whether claimant is entitled to temporary total disability benefits and medical benefits regarding his head, throat, neck, back and shoulders.

3. Attorney fees.

All other issues are reserved by the parties.

The claimant contends that:

"a. He sustained compensable injuries to his head, throat, neck, back, and shoulders as a result of his work motor vehicle accident.

b. He is entitled to additional medical treatment relative to his work motor vehicle accident.

c. He is entitled to temporary total disability from November 5, 2021, through November 13, 2021, and from January 14, 2022 until a yet-to-be-determined date in the future."

The respondents contend that the claimant's requested medical is not reasonably necessary or related to the work incident. Claimant is not entitled to temporary total disability related to the accident.

From a review of the entire record, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on June 16, 2022, and contained in a pre-hearing order filed that same date, as modified at the hearing, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his head which resulted in a physical or mental injury or illness, or to his throat, neck, back and shoulders on November 4, 2021.

FACTUAL BACKGROUND

Before the hearing began, the prehearing order was amended by claimant to add a head injury to the list of other physical injuries which were at issue. Respondent understood that a claim for an injury to claimant's head was at issue and did not object to this addition. Claimant withdrew his claim for rehabilitation benefits under §11-9-505, specifically reserving that issue.

HEARING TESTIMONY

Claimant testified that he was in a motor vehicle accident on November 4, 2021, when the truck he was driving flipped onto its side while he was hauling live turkeys from a farm to the processing plant. Claimant was taken to the emergency department at Mercy Hospital in Berryville, Arkansas, where he was treated and released from the hospital without any restrictions. Claimant stated that he had a bump on his head and produced photographs that he maintains depicted the injury to his head; he did not know if he was rendered unconscious. His wife testified that when she saw claimant in the emergency room, he was incoherent and confused.

Both claimant and his wife testified about claimant's mental condition before and

after the accident. Claimant's wife went into great detail about claimant's memory failure and his inability to drive without someone being with him. In her words, "His memory and cognitive issues have greatly declined. He cannot remember things he did, places, people. He can't remember appointments. Medicines, he has to have constant reminders from myself." Ms. Middleton said that she now must make all the decisions that the two of them have talked about during the thirty-nine years they have been together as a couple, as such discussions now cause him to become overwhelmed.

Claimant testified that a week or so after the accident, he was employed again as a driver for ABC Block, driving a dump truck hauling gravel and materials. Claimant did not seek any other medical attention following the accident until January 24, 2022, when he was hospitalized for breathing issues. While the medical records from that hospitalization indicate that claimant had COVID-19, he and his wife both denied those records were accurate. Since that hospitalization, claimant stated he has not been able to work.

REVIEW OF THE EXHIBITS

Claimant was examined and released on November 4, 2022, following his visit to Mercy Hospital in Berryville, Arkansas. The records contain no restrictions on claimant's activities. He had a CT-scan of his head, his cervical spine and chest/abdomen/pelvis. There was no acute intercranial abnormality noted on the CT-scan of the head, no acute fracture or subluxation of the cervical spine and no acute solid organ or traumatic injury in the chest, abdomen, or pelvis.

When admitted to Cox Health in Branson, Missouri on January 24, 2022, claimant's chief complaint was "shortness of breath, cough, and neck pain associated with cough." The assessment and plan at Cox Health were that claimant had COVID-19 pneumonia and was

started on a treatment plan of Remdesivir. Nothing about that treatment, or whether claimant truly had COVID-19 or not, appears to relate to the motor vehicle accident of November 4, 2021.

On March 1, 2022, claimant began treatment at Baxter Regional Medical Center, seeing Dr. Keith Jackson with complaints of several physical conditions, some unrelated to the accident of November 4, 2021. In the relevant part of the assessment, Dr. Jackson noted cervical disc disorder and spasm of the cervical paraspinous muscle. Regarding the cervical disc disorder, Dr. Jackson stated that it was a chronic condition; claimant denied neck pain at the time of examination. Regarding the spasm of the cervical paraspinous muscle, the clinical note says "acute due to MVA, discussed that this should calm down over the next few months. He would benefit from PT but does not have insurance and is not working."

Claimant followed up with Dr. Jackson on April 4, and there was no mention of a cervical disorder or the spasm of the cervical paraspinous muscle. At this visit, claimant complained of back pain which he had since the motor vehicle accident and memory loss with the following entry "Acute. Discussed he may have had a concussion that is causing his memory issues. Encouraged him to do things that challenge the mind, word puzzles, crossword puzzles, etc." On April 6, Dr. Jackson wrote the following "To Whom it May Concern" letter:

> "Mr. Middleton was injured in a rollover semi-truck accident on 11/4/21. He suffered multiple injuries as his seat belt failed to restrain him as evidenced by truck camera footage. It is my medical opinion that he suffered a concussed head injury as well, from which he continues to have symptoms. He continues to experience problems with memory loss. We will continue to monitor his condition closely."

During the May 3, 2022 visit, Dr. Jackson again mentioned the cervical disc disorder along with the lumbar disc disorder with myelopathy and memory loss or impairment.

Claimant was also referred to a speech pathologist, Julie Brandon. Ms. Brandon administered a cognitive linguistic quick test and found that claimant's memory was moderately impaired, and his executive functions and visuospatial skills were mildly impaired.

On June 7, 2022, claimant returned to Dr. Jackson and there was no mention of his cervical or lumbar difficulties, but the memory loss or impairment was noted as unchanged.

On July 18, 2022, claimant saw Dr. Vernon Cooper at Ozark Health Medical Center. Dr. Cooper recommended an MRI of claimant's brain and a formal neuropsychic testing to determine if claimant had post-concussion memory problems as opposed to an on-going progressive dementia or pseudodementia relating to depression and anxiety. The impression from the MRI was "normal MRI of the brain."

On August 11, 2022, claimant was seen at Arkansas Neuropsychology and Behavioral Health in Sherwood, Arkansas. It appears that the report was prepared by Dr. Kaitlyn Gall, a neuropsychology post doctorate fellow, with Dr. Gall's work being supervised by Dr. Garrett Andrews, a certified forensic examiner in the State of Arkansas. The clinical impressions from that visit are set out below in its entirety:

> Mr. Middleton's neurocognitive profile is valid and mildly abnormal. He demonstrates inefficiencies in his verbal processing speed, which is likely negatively impact his ability to efficiently encode new verbal information. It should be noted his delayed, verbal recall; overall complexity working memory; visual processing speed; and judgment were within normal limits. It should be noted his visual skills appear superior to his verbal ability.
>
> Mr. Middleton's psychosocial profile reveals amplification of somatic and cognitive symptoms which are likely the result of genuine mood dysfunction. He likely feels dejected, exhibits symptoms of PTSD, and has a tendency to experience physical reactions to negative emotions. His reports of worsening memory loss months after the MVA are inconsistent with a TBI and it is very likely his mood dysfunction that negatively impacts his cognitive functioning. Nevertheless, Mr. Middleton is within the window of recovery

following a mild brain injury and would be expected to continue to improve, especially with treatment of his mood. As such, interventions aimed at improving his behavioral disturbance should be the focus of treatment. It is recommended he return for an updated neuropsychological examination in one year to monitor his cognitive and emotional status. See recommendations below.

Diagnosis:

F43.10 Posttraumatic stress disorder
F32.9 Depressive disorder

Recommendations:

1. Cognitive Behavioral Therapy (CBT) to address mood and teach adaptive coping skills (e.g., relaxation training). Trauma-related therapy would also be beneficial…
2. Medication to address mood. SSRIs (e.g., Lexapro) have been found to be especially efficacious for treating depression.
3. Utilize cognitive Rehabilitation strategies to Aid attention in memory and everyday life:
a. Address anxiety-provoking or upsetting situations before beginning a task.
b. Write down information and use a calendar/alarm to keep track of tasks.
c. Use mnemonic strategies to Aid in encoding and recall, such as repetition, elaboration, personalization, and chunking.
d. Given your Superior visual abilities, attempt to use visual strategies when learning new information.
e. Break larger projects into smaller, step-by-step goals to make them more manageable and reduce feeling overwhelmed.
f. Work in a low-stimulus environment free from distractions
4. Repeat neuropsychic exam in 1 year to monitor cognitive and functional status.

An addendum to that report was issued on September 27, 2022:

"For clarification, it should be noted that Mr. Middleton is referred for injury sustained in a MVA in November 2021. He currently exhibits mild cognitive deficits, depression, and PTSD. Given history and reports, he did likely sustain a mild traumatic brain injury. However, the current cognitive defects are grossly impacted by his mood difficulties. These are all related to the MVA. He is still within the recovery window and should continue to be monitored during treatment. He should refrain from being overstimulated and at this time, not return to work full time. With continued treatment as noted above, he may be able to return to part-time work with a stepwise

> progression toward full-time work. He should be re-examined at approximately 1 year post accident."

On January 16, 2023, Dr. Andrews prepared the following:

> "It is noted that Mr. Middleton was examined as a clinical patient and the examination was to answer a clinical question. The referral question was asked, does Mr. Middleton have "early onset dementia versus pseudodementia" related to mood changes. The information obtained in the initial report and addendum regarding history related to the MVA and subsequent reported symptoms following were based on subjective reports from Mr. Middleton and his wife. There was no corroborating medical evidence reviewed or provided. Objective examination revealed mild variability in verbal processing speed that was deemed below expectations with grossly intact memory, attention, judgment, and visuospatial abilities. This variability was attributed to subjective mood difficulties reported since the accident. Again, there was no corroborating evidence reviewed or provided with regard to pre-accident functioning of cognition or mood. In short, regarding the referral question, Mr. Middleton did NOT meet the criteria for diagnosis of Dementia or neurocognitive disorder. Subsequent recommendations were made based on the clinical concerns and subjective complaints by Mr. Middleton and his wife."[1]

In addition to the medical records, claimant introduced the accident report prepared by the police working the scene, several photographs of both the accident and claimant at the ER, and a video from the cab of the truck, showing a view of both the road and inside the cab at the time of the accident.

[1] In his post-hearing brief, claimant argued that this January 16, 2023, report should not be given any weight because of the "dubious circumstances" under which it was prepared. However, those circumstances were not presented as part of the record, and although I am aware of what claimant is referring to, I cannot take judicial notice of the events leading up to the preparation of that report that are not in the record. Ultimately, though, the January 16, 2023, report is not dispositive of the issues in this case, as my decision on the merits of this claim would be the same without it.

ADJUDICATION

The claimant maintains his motor vehicle accident of November 4, 2021, resulted in both physical and mental injuries. Because the standards for obtaining benefits for these types of injuries are different, the physical injuries claim will be addressed before the claim for mental injury.

A. Claim for injury to the throat, neck, back and shoulders.

In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) 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 establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630.

While claimant identified the specific time and place of the motor vehicle accident that occurred during his employment which resulted in him going to the emergency room for an examination, nothing about that examination revealed an objective finding that established claimant had an injury to his throat, neck, back and shoulders. CT scans taken immediately after the accident showed no abnormalities with his neck, chest, abdomen, and pelvis. He was released with no restrictions, and after he was fired for causing the accident, he was working again the next week at full duty. The issues claimant had with his throat in January 2022 were not attributed to the motor vehicle accident by the treating physicians at that time; his neck pain was deemed to be a result of coughing. The only objective medical finding as to one of the parts of his body that claimant alleged was injured was a spasm in

his neck noted by Dr. Jackson in March 2022, almost five months after the accident; however, this spasm wasn't noted during his hospitalization in January 2022 and was not present during the April 2022 visit with Dr. Jackson.

In reviewing all the records, I find claimant has failed to meet his burden of proof that he sustained a compensable injury to his throat, neck, back or shoulders, as there was no medical evidence of objective findings to support this portion of his claim.

B. Claim for mental injury or illness.

While claimant's contention was for an injury to his head, it was clear from the testimony and the medical evidence that he was not referring to an external injury to that portion of his body, but rather a mental injury or illness. Arkansas Code Annotated §11-9-113 provides the framework under which a mental injury may be deemed compensable for purposes of workers' compensation law:

> (a)(1) A mental injury or illness is not a compensable injury unless it is caused by physical injury to the employee's body and shall not be considered an injury arising out of and in the course of employment or compensable unless it is demonstrated by a preponderance of the evidence; provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence.
>
> (2) No mental injury or illness under this section shall be compensable unless it is also diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders.

Finding claimant had not established that he suffered a compensable physical injury is likely dispositive of his claim for a mental injury. In *Dugan v. Jerry Sweetster, Inc.*, 54 Ark. App. 401, 928 S.W.2d 341 (1996), the Court of Appeals examined what a claimant needed to show to demonstrate a mental condition was connected to a physical injury:

> We note that Webster's defines injury as simply "harm or damage." Webster's New World Dictionary and Thesaurus 320 (1996). "Bodily injury" has been defined as "physical pain, illness or any impairment of physical condition." Black's Law Dictionary 786 (6th ed. 1990). One medical dictionary defines injury as "damage or wound or trauma." Stedman's Medical Dictionary 786 (25th ed. 1990). Another calls it "a disruption of the integrity or function of a tissue or organ by external means, which are usually mechanical but can also be chemical, electrical, thermal, or radiant." International Dictionary of Medicine and Biology, 1443, Vol. II. (1986).

As mentioned above, the testing on claimant's physical condition at the emergency room showed none of the harms that are described above. Still, after reviewing the video of how claimant was thrown about in the cab of his truck as it flipped onto its side and having heard the testimony of him and his wife as to the bump on his head following the accident, I determined that a closer examination of that portion of his claim on its merits was warranted.

While several of the medical professionals that treated claimant gave an opinion that he suffered a brain injury, only Arkansas Neuropsychology and Behavioral Health met the requirements of §11-9-113 that the mental injury be diagnosed by a licensed psychologist or psychiatrist. As such, I included a large portion of the narratives from those records in my review of the exhibits. Nothing from the Diagnostic and Statistical Manual of Mental Disorders (hereinafter DSM-5) on post-traumatic stress disorder (hereinafter PTSD) or depression was submitted for me to consider, but *Lincoln Pub. Sch. v. Secrist*, 2016 Ark. App. 315, holds "the Commission can, and indeed should, refer to a manual that is not in the record when by law the manual must be consulted to decide an issue in dispute." As such, I located the DSM-5 provisions on depression, which are set forth in *Lincoln,* and include:

> A. Five (or more) of the following symptoms have been present during the same 2-week period and represent a change from previous

functioning; at least one of the symptoms is either (1) depressed mood or (2) loss of interest or pleasure.
Note: Do not include symptoms that are clearly attributable to another medical condition.

1. Depressed mood most of the day, nearly every day, as indicated by either a subjective report (e.g., feels sad, empty, hopeless) or observation made by others (e.g., appears tearful).
2. Markedly diminished interest or pleasure in all, or almost all, activities most of the day, nearly every day (as indicated by either subjective account or observation).
3. Significant weight loss when not dieting or weight gain (e.g., a change of more than 5% of body weight in a month) or decrease or increase in appetite nearly every day.
4. Insomnia or hypersomnia nearly every day.
5. Psychomotor agitation or retardation nearly every day (observable by others, not merely subjective feelings of restlessness or being slowed down).
6. Fatigue or loss of energy nearly every day.
7. Feelings of worthlessness or excessive or inappropriate guilt (which may be delusional) nearly every day (not merely self-reproach or guilt about being sick).
8. Diminished ability to think or concentrate, or indecisiveness, nearly every day (either by subjective account or as observed by others).
9. Recurrent thoughts of death (not just fear of dying), recurrent suicidal ideation without a specific plan, or a suicide attempt or a specific plan for committing suicide.

B. The symptoms cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.

C. The episode is not attributable to the physiological effects of a substance or to another medical condition.

Diagnostic and Statistical Manual of Mental Disorders, 160-61 (5th ed. 2013).

The entries of Dr. Andrews (either his own or those of Dr. Gall, whom he was supervising) did not specify five elements of depression that are necessary to establish that condition under the DSM-5 guidelines. In *Lincoln*, *supra,* an award of benefits from the Full Commission was overturned by the Court of Appeals because the evidence supported only four of the five necessary criteria. Here, the report simply says that he likely feels dejected.

It does not provide enough information for me to extrapolate from it the information needed to determine if the DSM-5 criteria are met. Contrast this with the medical report in *Hope Livestock Auction Co. v. Knighton*, 67 Ark. App. 165, 992 S.W.2d 826 (1999), which contained more than a conclusionary finding, and allowed the Commission to make a finding pursuant to the DSM in effect at the time:

> While a bare diagnosis, without an explanation of the characteristics of the mental illness, might not be sufficient to meet the requirements of section 11-9-113(a)(2), here Dr. Tobey, in both his deposition and progress notes, described Knighton's Bipolar I Disorder in such detail that the Commission could easily make the finding that the diagnosis met the DSM-IV criteria. Although it would be preferable in cases of mental injury or illness for a psychiatrist or psychologist to correlate the basis of his opinion to the DSM criteria, we recognize the Commission's expertise and ability to translate medical testimony into findings of fact. We cannot say that the Commission's finding that Knighton's Bipolar I Disorder was a compensable work-related injury is not supported by substantial evidence.

In sum, claimant did not meet his burden of proof of a depression that meets the DSM-5 criteria, as there was not sufficient medical evidence that he met at least five of the required elements for that diagnosis.

I then did a similar analysis of the PTSD diagnosis after locating the DSM-5 criteria for that condition at:

https://www.ptsd.va.gov/professional/treat/essentials/dsm5_ptsd.asp:

DSM-5 Criteria for PTSD

All of the criteria are required for the diagnosis of PTSD. The following text summarizes the diagnostic criteria:

Criterion A (one required): The person was exposed to: death, threatened death, actual or threatened serious injury, or actual or threatened sexual violence, in the following way(s):

- Direct exposure
- Witnessing the trauma
- Learning that a relative or close friend was exposed to a trauma

- Indirect exposure to aversive details of the trauma, usually in the course of professional duties (e.g., first responders, medics)

Criterion B (one required): The traumatic event is persistently re-experienced, in the following way(s):

- Unwanted upsetting memories
- Nightmares
- Flashbacks
- Emotional distress after exposure to traumatic reminders
- Physical reactivity after exposure to traumatic reminders

Criterion C (one required): Avoidance of trauma-related stimuli after the trauma, in the following way(s):

- Trauma-related thoughts or feelings
- Trauma-related reminders

Criterion D (two required): Negative thoughts or feelings that began or worsened after the trauma, in the following way(s):

- Inability to recall key features of the trauma
- Overly negative thoughts and assumptions about oneself or the world
- Exaggerated blame of self or others for causing the trauma
- Negative affect
- Decreased interest in activities
- Feeling isolated
- Difficulty experiencing positive affect

Criterion E (two required): Trauma-related arousal and reactivity that began or worsened after the trauma, in the following way(s):

- Irritability or aggression
- Risky or destructive behavior
- Hypervigilance
- Heightened startle reaction
- Difficulty concentrating
- Difficulty sleeping

Criterion F (required): Symptoms last for more than 1 month.

Criterion G (required): Symptoms create distress or functional impairment (e.g., social, occupational).

Criterion H (required): Symptoms are not due to medication, substance use, or other illness.

Two specifications:

1. **Dissociative Specification.** In addition to meeting criteria for diagnosis, an individual experiences high levels of either of the following in reaction to trauma-related stimuli:
    - Depersonalization. Experience of being an outside observer of or detached from oneself (e.g., feeling as if "this is not happening to me" or one were in a dream).
    - Derealization. Experience of unreality, distance, or distortion (e.g., "things are not real").
2. **Delayed Specification.** Full diagnostic criteria are not met until at least six months after the trauma(s), although onset of symptoms may occur immediately.

In reading the reports of Dr. Andrews, as well as reviewing the testimony of claimant and his wife and comparing that with the criteria for a PTSD diagnosis, I can find the first criteria was met, in that a motor vehicle accident can be an exposure to death or serious physical injury, or the threat thereof. There was some evidence presented on Criterion F, G, and H, at least in the testimony of claimant and his wife. From there, however, claimant did not relate that he was re-experiencing the event. He was avoiding driving a large truck for the same reason he was avoiding driving an automobile—memory and concentration issues, not because he was reliving the accident. Failing to establish any one of the Criterion B through E would be fatal to this claim, and I find that none of those four were established.[2]

As with the claim of depression, the competent medical evidence under §11-9-113 does not support a finding of a diagnosis of PTSD under the DSM-5 criteria.

ORDER

Claimant failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his head, resulting in a mental injury or illness, or a compensable physical injury to his throat, neck, back and shoulders on November 4, 2021. Therefore, his claim for compensation benefits is hereby denied and dismissed.

Respondent is responsible for paying the court reporter her charges for preparation of the hearing transcript in the amount of $ 837.95.

[2] To be clear, I am not finding that claimant's testimony alone could provide sufficient proof of a PTSD diagnosis. My observations are based on a "best case scenario" for claimant, pairing his testimony with the conclusionary finding of PTSD by Dr. Andrews in August 2022. Even with that approach, his proof was still lacking on several of the required criteria.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE