

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H102851**

**MICHAEL W. MITCHELL,
EMPLOYEE**

CLAIMANT

**JET ASPHALT & ROCK CO., INC.,
EMPLOYER**

RESPONDENT

**NAT'L FIRE INS. CO. OF HARTFORD/
CNA INS. CO.,
INS CARRIER/TPA**

RESPONDENT

OPINION AND ORDER FILED MAY 10, 2023

Hearing conducted before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, on February 9, 2023, in El Dorado, Union County, Arkansas.

The claimant was represented by the Honorable Gregory R. Giles, Moore, Giles & Matteson, Texarkana, Miller County, Arkansas.

The respondents were represented by the Honorable Karen H. McKinney, The Barber Law Firm, Little Rock, Pulaski County, Arkansas.

INTRODUCTION

In the Amended Prehearing Order filed November 28, 2023, the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction over this claim.
2. The employer/employee/carrier-TPA relationship existed with the claimant at all relevant times, including May 2, 2019, when the claimant sustained a compensable injury to his left arm for which the respondents paid medical and indemnity benefits. The claimant alleges he also sustained a "compensable injury" to his thoracic spine on this same date, May 2, 2022.
3. The claimant's average weekly wage (AWW) was \$794.18, which would entitle him to weekly indemnity rates of \$529.00 for temporary total disability (TTD), and \$397.00 for permanent partial disability (PPD) benefits if his claim is deemed compensable.

4. The respondents controvert the claimant's alleged upper back/thoracic spine injury in its entirety.
5. All parties specifically reserve any and all other issues for future determination and/or hearing.

(Commission Exhibit 1 at 1-2; Hearing Transcript at 5-6). Pursuant to the parties' mutual agreement the issues litigated at the hearing were:

1. Whether the claimant sustained a "compensable injury" to his thoracic spine within the meaning of the Arkansas' Workers' Compensation Act (the Act) on May 2, 2019.
2. If the claimant's alleged upper back/thoracic spine injury is deemed compensable, the extent to which he is entitled to medical, TTD, and PPD benefits.
3. Whether the claimant's attorney is entitled to a controverted fee on these facts.
4. The parties specifically reserve any and all other issues for future litigation and/or determination.

(Comms'n Ex. 1 at 2; T. at 5-6). Note the claimant withdrew his contention that he also sustained a compensable injury to his ribs as a result of the subject May 2, 2019, work incident. (Comms'n Ex. 1 at 2; T. 5).

The claimant contends he sustained a compensable injury to his upper back/thoracic spine on May 2, 2019. He contends the medical treatment he has had on his thoracic spine/upper back is related to and reasonably necessary for treatment of his upper back/thoracic spine injury and the respondents should be ordered to pay for it. He contends the respondents should be responsible for payment of his treatment at the Veterans' Administration Hospital (VA), for which the VA is

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seeking reimbursement from him, as well as any and all payments Blue Cross/Blue Shield (BCBS) has made for his medical treatment and/or related expenses for which BCBS is seeking subrogation. The claimant further contends he is entitled to additional reasonably necessary medical treatment related to his upper back/thoracic spine injury; to TTD benefits from on or about July 9, 2019, until he reached maximum medical improvement (MMI) on or about October 21, 2021; and to PPD benefits based on a permanent anatomical impairment rating of at least 13% (not 12% as he contended in the amended prehearing order) pursuant to the applicable *AMA Guides to the Evaluation of Permanent Impairment* (American Medical Association 4th Edition) (the *AMA Guides*). Finally, the claimant contends he is entitled to wage loss disability benefits in excess of any permanent impairment rating; and that his attorney is entitled to a controverted attorney's fee based on any and all indemnity benefits the Commission may award him. The claimant specifically reserves any and all other issues for future litigation and/or determination. (Comms'n Ex. 1 at 2-3; T. 5-6).

The respondents contend the claimant has received all benefits to which he is entitled by law for the subject May 2, 2019, work incident. The respondents contend the claimant's thoracic disc herniation diagnosed in December 2020 is not causally related to the minor compensable injury of May 2, 2019, and therefore, the claimant cannot meet his burden of proof pursuant to the Act in demonstrating he sustained a "compensable injury" to his thoracic spine. The respondents contend further that if the claimant's upper back/thoracic spine injury is deemed compensable he is entitled to a six percent (6%) permanent anatomical impairment rating for a two (2)-level fusion pursuant to the applicable *AMA Guides*. The respondents specifically reserve any and all other

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issues for future litigation and/or determination. (Comms'n Ex. 1 at 3; T.6).

The record herein consists of the hearing transcript, and any and all exhibits contained therein and attached thereto.

STATEMENT OF THE CASE

The claimant, Mr. Michael W. Mitchell (the claimant), was 60 years old at the time of the hearing, was 57 years old at the time of the subject work incident, Thursday, May 2, 2019. On that day the claimant was working as a yard man for Jet Asphalt. His primary job duties were keeping the plant clean and mowed. The claimant testified that on May 2, 2019, the plant was shut-down for maintenance, and he and co-workers were moving a three (3)-foot by six (6)-foot metal plate to inspect it for damage when the plate fell on him, knocking him to the ground, pinning his right arm against his chest and neck. A co-worker lifted the metal plate off of him, while another co-worker pulled him out from under the plate. The claimant testified his sternum was hurting, he thought he may have cracked a rib, and he had some scrapes on his left arm and back. The claimant's supervisor immediately took him to the doctor who conducted a physical examination and ran some diagnostic tests including CT scans and X-rays. The claimant testified that after reviewing the diagnostic test results the doctor did not find anything wrong with him, and released him to return to work the following Monday, which would have been May 5, 2019. The claimant denied he was experiencing any back pain at that time. The claimant had been treated for a hernia in the past and was experiencing pain similar to pain he had experienced in the past when he had a hernia. Medical records indicate the claimant sought treatment for this pain in June 2019, and his doctor took him off work for these hernia complaints from 6/19/2019 through 6/24/2019, and again

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from 6/24/2019 through 7/9/2019. Thereafter, when the claimant returned to work, he was offered work as a flagger on a road crew, but he refused to perform this work because he said he could not see well enough to do the job. He then was terminated for insubordination. (T. 15-41; Claimant's Exhibit 1 at 2-15).

Thereafter, the claimant did not see a doctor again until July 15, 2020, when he sought treatment for a pulled groin muscle and hypogastric abdominal pain (abdominal pain below his stomach) at the Dallas County Medical Center. (CX1 at 19-21). He next sought treatment at the Veterans' Administration Hospital (VA) on January 28, 2020, through December 21, 2020, for complaints of pain in his right testicle and right breast. At the first VA visit in January 2020, the claimant mentioned the subject work incident to his treating physician, stating his right-sided abdominal and pelvic pain had been hurting since the May 2019 work incident. An abdominal and pelvic CT scan revealed no acute bone fractures and, "No acute findings in the abdomen or pelvis; however, the CT scan did reveal some abnormalities in the claimant's left hip, "consistent with possible femoral acetabular impingement syndrome." A radiology report dated March 25, 2021, noted some abnormalities in the claimant's left hip including, "Incidental note is made of a T1 hypointense lesion in the left ilium most compatible with a bone island." (CX1 at 22-39; 25-27). An MRI of 11/05/2020, revealed, "no acute fracture or dislocation" in the claimant's right hip, as well as mild degenerative changes, but no acute fracture or dislocation. (CX1 at 28). A METS bone scan of 12/21/2020 was compared with an MRI of the claimant's thoracic spine dated 12/02/2020, and a CT scan of his abdomen and pelvis dated 11/12/2020, and all of the bone scan findings were deemed to be, "suggestive of degenerative changes." (CX1 at 39).

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On February 8, 2021, the claimant saw Dr. Matthew Helton, a neurology/neurosurgical resident at the University of Arkansas for Medical Sciences (UAMS), complaining of right hip pain, and a hernia he believed developed a month or so after the May 2019 work incident; and he complained of problems walking, of stumbling, and progressive pain in the area of his groin and right testicle. (CX1 at 40). After seeing some other physicians at UAMS he came under the care of Dr. Thomas G. Pait, the chief of neurosurgery who ordered an MRI that revealed, “a large disc herniation at the mid-lower thoracic spine with compression of the spinal cord...a T10-T11 disc herniation spinal cord compression and myelomalacia”, which is a softening of the spinal cord below the area of a spinal cord compression from a lesion or herniation. (CX1 at 42-43). The UAMS physicians also noted degenerative changes in the claimant’s cervical and thoracic spine. (CX1 at 62-63). The UAMS physicians ultimately diagnosed the claimant with a herniation of the T10-11 intervertebral disc of this thoracic spine with resulting myelopathy, and on May 11, 2021, Dr. Pait. performed surgery to decompress the herniated thoracic disc, as well as to fuse levels T10-12; and he continued follow-up of the claimant through November 24, 2021. (CX1 at 67-238).

In a letter to the claimant’s attorney dated February 22, 2022, Dr. Pait opined:

Within a reasonable degree of medical certainty, the trauma [from the May 2, 2019, work incident] did not cause the calcification of the intervertebral disc. Disc calcification is the accumulation of calcium phosphate dehydrate or hydroxyapatite crystals in the nucleus pulposus of the disc. It takes many years for the calcification to develop. The trauma did not cause the calcification of the disc; however, the trauma may have aggravated a pre-existing problem.

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(CX1 at 239) (Bracketed material added).

By letter dated March 3, 2022, to Dr. Wayne Bruffett, the claimant's attorney requested that Dr. Bruffett perform an independent medical evaluation (IME) of the claimant in order to address the causation of the claimant's herniated thoracic disc, and to determine the percentage of the claimant's permanent anatomical impairment, if any, related to the disc herniation and Dr. Pait's surgery. (CX1 at 240-241). Dr. Bruffett performed the IME on April 4, 2022. (CX1 at 242-247). Dr. Bruffett stated it was his opinion "within a reasonable degree of medical certainty the herniated thoracic disc that was calcified was rendered symptomatic as a consequence of the May 2, 2019 accident." (CX1 at 246). Dr. Bruffett assigned the claimant a 13% to the body-as-a-whole (BAW) permanent anatomical impairment rating based on a two (2)-level fusion with residual symptoms. (CX1 at 247). Thereafter, the respondents requested and the parties took Dr. Bruffett's evidentiary deposition which, along with other testimony and evidence relevant to my decision herein will be examined in greater detail in the, "Discussion" section of this opinion, *infra*.

The claimant testified he is incapable of being trained to do any other job. He agreed he worked for over nine (9) or ten (10) different employers to include the military, Potlatch, Hole-in-One, International Paper, Idaho Lumber, and Jet Asphalt. He agreed that he had to be trained by each of his employers as to how to do the jobs he was hired to perform. When asked on cross-examination about the gap in his employment at Potlatch, the claimant readily admitted he was incarcerated from 1995 to 1997 for sexual abuse, which he further conceded was in fact child molestation. The claimant also admitted that after being released from prison, he was sent back for a parole violation for drinking and being in a prohibited location. The claimant admitted that in

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the past he had a problem with drugs and alcohol. He further admitted that in addition to quitting Jet Asphalt over a dispute at work, he also quit his job at Hole-in-One over a disagreement with his employer rather than face termination. (T. 62-85).

The claimant filed for and started receiving Social Security disability (SSD) benefits in 2021. In addition to his left leg foot drop, the claimant testified that he has pain, dizzy spells, memory loss, and balance issues. He testified that he cannot bend or twist or move like he used to. He said he is able to vacuum, do the dishes, clean the kitchen and do the laundry. He is also able to mow his yard with a zero (0)-turn mower. The claimant has a current driver's license and is able to drive and operate a vehicle safely. He has not attempted to seek any employment or to return to work since Dr. Pate released him. (T. 84-108).

The claimant described two (2) previous back injuries. The first injury occurred around 2010 while he was working for Hole-in One when he was lifting a 50-pound box and he pulled a muscle in his back for which he received a few weeks of chiropractic treatment. The claimant sustained another back injury in 2011 while moving furniture at his house. He testified that other than requiring a few muscle relaxers from that injury, he was fine. The claimant testified he recovered from both those back injuries, and that he never had any significant injuries or problems with his back since. The claimant admitted he broke his leg in 2015, which caused him to miss work. (T. 58-60; 86).

When questioned about Respondents' Exhibit 2 – a photograph the claimant posted on his Facebook page dated July 2, 2017, which shows him laying on a hospital bed – he testified he had a wreck while test-driving a motorcycle when the front brake or wheel locked up resulting in the

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his being thrown from the motorcycle. As the claimant described the incident on his Facebook post: “This is why I sold my bike. Test-drove a 1985 Honda Shadow 750. Front brakes locked up and I ate the blacktop. Broke 3 ribs and had awesome road rash.” (RX2 at 1-2; T. 87). The claimant denied any injury to his back or spine from this motorcycle accident and claimed he did not miss any time from work because he was already on vacation. (RX2 at 1-2; T.86-89). But Ms. Lisa Woolsey, Jet Asphalt’s manager, testified the claimant was off work for three (3) weeks on medical leave, not vacation, after the motorcycle wreck. (T. 131). There is no evidence the claimant told either Dr. Pait or Dr. Bruffett about this motorcycle accident where he broke (3) ribs. Finally, the claimant testified that all his prior employment experience was labor intensive and he did not believe he could perform this type of work any longer. (T. 58-60; RX2 at 1-2; T. 86-89).

DISCUSSION

The Burden of Proof

When deciding any issue, the ALJ and the Commission shall determine, on the basis of the record as a whole, whether the party having the burden of proof on the issue has established it by a preponderance of the evidence. *Ark. Code Ann.* § 11-9-704(c)(2) (2023 Lexis Replacement). The claimant has the burden of proving by a preponderance of the evidence he is entitled to benefits. *Stone v. Patel*, 26 Ark. App. 54, 759 S.W.2d 579 (Ark. App. 1998). *Ark. Code Ann.* Section 11-9-704(c)(3) (2023 Lexis Repl.) requires the ALJ, the Commission, and the courts “shall strictly construe” the Act, which also requires them to read and construe the Act in its entirety, and to harmonize its provisions when necessary. *Farmers Coop. v. Biles*, 77 Ark. App. 1, 69 S.W.2d

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899 (Ark. App. 2002). In determining whether the claimant has met his burden of proof, the Commission is required to weigh the evidence impartially without giving the benefit of the doubt to either party. **Ark. Code Ann.** § 11-9-704(c)(4) (2023 Lexis Repl.); *Gencorp Polymer Products v. Landers*, 36 Ark. App. 190, 820 S.W.2d 475 (Ark. App. 1991); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 633 (Ark. App. 1987).

All claims for workers' compensation benefits must be based on proof. Speculation and conjecture, even if plausible, cannot take the place of proof. *Ark. Dep't of Corrections v. Glover*, 35 Ark. App. 32, 812 S.W.2d 692 (Ark. App. 1991); *Dena Constr. Co. v. Herndon*, 264 Ark. 791, 595 S.W.2d 155 (1979). It is the Commission's exclusive responsibility to determine the credibility of the witnesses and the weight to give their testimony. *Whaley v. Hardees*, 51 Ark. App. 116, 912 S.W.2d 14 (Ark. App. 1995). The Commission is not required to believe either a claimant's or any other witness's testimony, but may accept and translate into findings of fact those portions of the testimony it deems believable. *McClain v. Texaco, Inc.*, 29 Ark. App. 218, 780 S.W.2d 34 (Ark. App. 1989); *Farmers Coop. v. Biles, supra*.

The Commission has the duty to weigh the medical evidence just as it does any other evidence, and its resolution of the medical evidence has the force and effect of a jury verdict. *Williams v. Pro Staff Temps.*, 336 Ark. 510, 988 S.W.2d 1 (1999). It is within the Commission's province to weigh the totality of the medical evidence and to determine what evidence is most credible given the totality of the credible evidence of record. *Minnesota Mining & Mfg'ing v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999).

Compensability of the claimant's alleged thoracic spine injury

The threshold question to be decided in this case is whether the claimant has met his burden of proof in demonstrating he sustained a compensable injury within the Act's definition to his lumbar spine. For any specific incident injury to be compensable, the claimant must prove by a preponderance of the evidence that his injury: (1) arose out of and in course of his employment; (2) caused internal or external harm to her body that required medical services; (3) is supported by objective findings, medical evidence, establishing the alleged injury; and (4) was caused by a specific incident identifiable by time and place of occurrence. *Ark. Code Ann.* § 11-9-102(4); *Cossey v. Gary A. Thomas Racing Stable*, 2009 Ark. App. 666, at 5, 344 S.W.3d 684, 687 (Ark. App. 2009). The claimant bears the burden of proving the compensable injury by a preponderance of the credible evidence. *Ark. Code Ann.* § 11-9-102(4)(E)(i); and *Cossey, supra*.

Moreover, the claimant must prove a causal relationship exists between her employment and the alleged injury. *Wal-Mart Stores, Inc., v. Westbrook*, 77 Ark. App. 167, 171, 72 S.W.3d 889, 892 (Ark. App. 2002) (citing *McMillan v. U.S. Motors*, 59 Ark. App. 85, 90, 953 S.W.2d 907, 909 (Ark. App. 1997)). Objective medical evidence is not always essential to establish a causal relationship between the work-related accident and the alleged injury where objective medical evidence exists to prove the existence and extent of the underlying injury, and a preponderance of other nonmedical evidence establishes a causal relationship between the objective findings and the work-related incident in question. *Flynn v. Southwest Catering Co.*, 2010 Ark. App. 766, 379 S.W.3d 670 (Ark. App. 2010).

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“Objective findings” are those findings which cannot come under the voluntary control of the patient. *Ark. Code Ann.* § 11-9-102(16)(A); *Long v. Wal-Mart Stores, Inc.*, 98 Ark. App. 70, at 80, 250 S.W.3d 263, at 272 (Ark. App. 2007). Objective findings “specifically exclude subjective complaints or findings such as pain, straight-leg-raising tests, and range-of-motion tests.” *Burks v. RIC, Inc.*, 2010 Ark. App. 862 (Ark. App. 2010).

It is a black letter principle of workers’ compensation law that an employer takes the employee as he finds him; and an employment-related incident that aggravates a preexisting condition(s) is (are) compensable. *Heritage Baptist Temple v. Robison*, 82 Ark. App. 460, 120 S.W.3d 150 (Ark. App. 2003). Stated another way, a preexisting disease or infirmity does not disqualify a claim if the work-related incident aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which the claimant seeks benefits. *Jim Walter Homes v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (Ark. App. 2003). The aggravation of a preexisting, otherwise non-compensable condition by a compensable injury is itself compensable. *Oliver v. Guardsmark*, 68 Ark. App. 24, 3 S.W.3d 336 (Ark. App. 1999). An aggravation is a *new injury* resulting from an independent incident. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (Ark. App. 2000) (Emphasis added). Of course, since it is a new injury resulting from an independent cause, any alleged aggravation of a preexisting condition must meet the Act’s definition of a “compensable injury” in order for the claimant to prove compensability. *Farmland Ins. Co. v. Dubois*, 54 Ark. App. 141, 923 S.W.2d 883 (Ark. App. 1996).

Concerning the proof required to demonstrate the aggravation of a preexisting condition, our appellate courts have consistently held that since an aggravation is a *new injury*, a claimant must

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prove it by *new objective evidence of a new injury different than the preexisting condition*. *Vaughn v. Midland School Dist.*, 2012 Ark. App. 344 (Ark. App. 2012) (citing *Barber v. Pork Grp., Inc.*, 2012 Ark. App. 138 (Ark. App. 2012); *Grothaus v. Vista Health, LLC*, 2011 Ark. App. 130, 382 S.W.3d 1 (Ark. App. 2011); *Mooney v. AT & T*, 2010 Ark. App. 600, 378 S.W.3d 162 (Ark. App. 2010). Where the only objective findings present are consistent with prior objective findings *or consistent with a long-term degenerative condition rather than an acute injury*, *this does not satisfy the objective findings requirement for the compensable aggravation of a preexisting condition injury*. *Vaughn*, 2012 Ark. App. 344, at 6 (holding that Arkansas courts have interpreted the Act to require “new objective medical findings to establish a new injury when the claimant seeks benefits for the aggravation of a preexisting condition”); *Barber, supra* (affirming the Commission’s denial of an aggravation of a preexisting condition claim *where the MRI findings revealed a degenerative condition, with no evidence of, and which could not be explained by, an acute injury*) (Emphases added).

Based on the law as applied to the applicable facts of this case, I find the claimant has failed to meet his burden of proof in demonstrating his thoracic spine condition constitutes a “compensable injury” within the Act’s meaning, for the following reasons.

First, while a medical opinion stated within a reasonable degree of medical certainty is not necessary to prove causation, in a case such as this one where the claimant had two (2) previous back injuries and other medical issues that he apparently believed were the cause of his pain – and he broke his leg, and had an apparently rather significant motorcycle accident where he broke three (3) ribs (and, of course, the rib bones are connected to the thoracic spine) – a medical opinion

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concerning causation is necessary. This is especially true where the record is devoid of any evidence the claimant told either Dr. Pait or Dr. Bruffett about the 2017 motorcycle accident in which he, “ate the asphalt...broke three ribs and had awesome road rash.” In light of this incident and the fact that neither Drs. Pait nor Bruffett were told about it, it would constitute sheer speculation and conjecture to relate the preexisting thoracic spine condition (which was calcified proving the objective medical evidence of injury was preexisting) to the subject work incident of May 2, 2019. *Dena, supra*. The respondents introduced prior medical records that confirmed the claimant did in fact have back pain and lumbar spasms which required medical treatment. Before the work incident. These medical records further show, as he testified, the claimant would seek medical treatment when he had a medical issue or pain.

Second, and significantly, neither Dr. Pait or Dr. Bruffett were able to provide an opinion concerning causation that meets the standards required by the Act and applicable case law. In response to the claimant’s attorney’s inquiry, in his letter dated February 22, 2022, Dr. Pait was unable to provide the requisite opinion. (CX1 at 239, and *supra*).

In his deposition the claimant’s chosen IME physician, Dr. Bruffett, concluded the claimant’s herniated thoracic disc calcified well before the May 2, 2019, work incident. Dr. Bruffett related the claimant’s symptoms to the May 2, 2019 accident based upon the claimant’s history of no symptoms before the accident and then complaining of symptoms after the accident. Dr. Bruffett testified he would have anticipated the claimant to have symptoms from the accident “pretty quick” after it occurred. Dr. Bruffett defined “pretty quick” to be “days or a few weeks.” When claimant’s deposition testimony of how he felt immediately after the accident was read to Dr. Bruffett, Dr.

Bruffett testified that claimant's complaints following the subject work incident did not elicit concern for a thoracic disc herniation. Dr. Bruffett's deposition does not meet the Act's standards that a medical opinion concerning causation must be stated within a reasonable degree of medical certainty. If anything, Dr. Bruffett's evidentiary deposition testimony deposition demonstrates, once again, that it would constitute sheer speculation and conjecture to attribute the claimant's herniated thoracic disc to the subject May 2, 2019, work incident. (Respondents' Exhibit 3).

Finally, Jet Asphalt's manager, Ms. Lisa Woolsey, was a demonstrably credible and articulate witness. She testified the claimant returned to work for Jet Asphalt on Monday, May 6, 2019 and he continued to work until he was taken off work by his doctor on June 19, 2019. Ms. Woolsey described two (2) separate conversations she had with the claimant after the May 2019 work-related incident. Directly and credibly contradicting the claimant's testimony, Ms. Woolsey testified the claimant brought the weekly paperwork from the Fordyce plant to the El Dorado office on two (2) separate occasions between his return to work after the subject incident and the date he quit because he would not perform the light duty flagging job. Ms. Woolsey testified that the Fordyce plant only had three (3) employees and that at times the claimant would be required to take the paperwork to El Dorado when the other two (2) employees were busy. During both of those brief visits, Ms. Woolsey engaged the claimant in conversation regarding the May 2019 work incident and asked him how he was doing. She testified the claimant joked about having a hard head and advised that he was doing fine. Ms. Woolsey also described her encounter with the claimant when he personally brought in the off-work slip from his primary care physician (PCP) taking him off work on June 19, 2019. Ms. Woolsey testified that the claimant reported to her that

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he had to be off work for a muscle in couple of weeks because he pulled his groin area and had a hernia. He told her he had done that several times before and assured her that he was going to be okay. And, again, significantly the claimant's motorcycle wreck, Ms. Woolsey testified after the July 2017 motorcycle accident in which the claimant broke three (3) of his ribs, he was in fact off work for three (3) weeks following that accident. Ms. Woolsey explained that the claimant took medical leave for the entire three (3) weeks and that he was not on vacation as employees are only allowed two (2) weeks of vacation, and that it must be taken during the two (2) weeks in December the plant is in shutdown each year. Ms. Woolsey confirmed the claimant had taken off work right before his accident to visit a member of his wife's family who was ill, but it was not his two (2)-week vacation, just a few days to travel to Missouri and back. On cross-examination, Ms. Woolsey testified the only injuries she could ascertain the claimant sustained to his back on May 2, 2019, were from the scratches and bruises. (T. 120-132).

Therefore, based on the applicable law as applied to the facts of this case, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations contained in the Amended Prehearing Order filed November 28, 2022, to which the parties agreed and affirmed on the record at the hearing hereby are accepted as facts.
2. The claimant has failed to meet his burden of proof in demonstrating he sustained a "compensable injury" within the Act's specific meaning to his thoracic spine as a result of the May 2, 2019, work incident.

3. Therefore, the other issues litigated at the hearing concerning the claimant's entitlement to additional medical care for his thoracic spine condition; to the payment of additional TTD benefits; PPD benefits based on Dr. Bruffett's 13% BAW permanent anatomical impairment rating; as well as wage loss disability benefits in excess of Dr. Bruffett's impairment rating are rendered moot.
4. The claimant's attorney is/is not entitled to a controverted attorney's fee on these facts.

Therefore, for all the aforementioned reasons, this claim is hereby respectfully denied and dismissed. If they have not already done so the respondents shall pay the court reporter's fee within twenty (20) days of their receipt of this opinion and order.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp