

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. G903539**

**WAYNE E. MORRIS, EMPLOYEE**

**CLAIMANT**

**ARKANSAS FORESTRY COMMISSION, EMPLOYER**

**RESPONDENT**

**PUBLIC EMPLOYEE CLAIMS DIVISION,  
CARRIER/TPA**

**RESPONDENT**

**OPINION FILED MAY 25, 2021**

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON in Little Rock, Pulaski County, Arkansas.

Claimant, Mr. Wayne E. Morris, was represented by Ms. Whitney James, Attorney at Law, Little Rock, Arkansas, at the hearing.

Respondents were represented by Mr. Robert Montgomery, Attorney at Law, Little Rock, Arkansas, at the hearing.

**STATEMENT OF THE CASE**

A hearing was held in the above-captioned claim on February 25, 2021, in Little Rock, Arkansas. A Pre-Hearing Order was previously entered in this case on December 1, 2020. The Pre-Hearing Order has been marked as Commission's Exhibit #1 and was made a part of the record without any objection from the parties.

**Stipulations:**

During the pre-hearing telephone conference and/or during the hearing, the parties agreed to the following stipulations. They read:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. An employer-employee relationship existed on August 8, 2018, the date of the claimed injury, at which time Claimant was earning sufficient wages to entitle him to a temporary total disability/permanent partial disability compensation rate of \$440.00/\$330.00.

3. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

Issues:

The parties agreed to litigate the following issues, which were also clarified at the hearing:

1. Whether Claimant sustained compensable injuries to his head, neck, back, left shoulder, left hand, right hand, left leg, and left foot as a result of an incident on August 8, 2018.
2. Whether Claimant is entitled to temporary total disability benefits from April 28, 2019, the day after surgery by Dr. McCarthy, until November 13, 2019, when he was released to work at full duty.
3. Whether Claimant was entitled to medical benefits as a result of the August 28, 2019, incident.
4. Whether Claimant was entitled to permanent partial disability benefits.
5. Whether Claimant was entitled to wage loss.

Contentions:

The following contentions were submitted by the parties:

Claimant contends that he was walking a fire line on August 8, 2018, and suffered a fall that caused severe injuries to his back and other injuries to his head, neck, left shoulder, left hand, right hand, left leg, and left foot. Claimant treated on his own, where it was determined that Claimant suffered, among other injuries, a C4-5 extrusion with cranial extension of disc material and severe mass effect on his spinal cord. Claimant ultimately required a cervical fusion to correct his injury. Respondents paid no benefits to Claimant despite the injury occurring on the job.

Respondents contend that Claimant has a history of pre-existing cervical and lumbar spine problems and that Claimant's surgeries in April and August 2019 were necessitated by the pre-existing conditions and were not causally related to Claimant's work activities, including the alleged fall on August 8, 2018. Respondents contend that, if the claim is found to be compensable,

the notice provisions of Ark. Code Ann. § 11-9-701(a)(1) apply, as Claimant did not file a Form AR-C until June 5, 2019. Respondents contend that they are not responsible for disability, medical, or other benefits relative to Claimant's alleged cervical or lumbar spine injury until June 5, 2019. Respondents further contend that Claimant elected to retire and remove himself from the workforce and is therefore not entitled to wage loss disability benefits. They further contend that all appropriate indemnity and medical benefits have been paid to Claimant for his alleged spinal injury.

Summary of Evidence:

The record consists of the hearing transcript of February 25, 2021, and the exhibits contained therein. Specifically, the following exhibits have been made a part of the record: Commission's Exhibit #1 included the Pre-Hearing Order entered on December 1, 2020; Claimant's Exhibit #1 consisted of sixty (60) pages of medical records; Respondents' Exhibit #1 was twelve (12) pages in length and consisted of medical records; Respondents Exhibit #2 was eleven (11) pages in length and included the First Report of Injury; the Form AR-2; the May 30, 2019, Form AR-C; the June 5, 2019, Form PECD 1; the Form AR-N; the Form AR-N Acknowledgement; the August 1, 2019, Form AR-C; and Claimant's June 26, 2020, retirement letter; Respondents' Exhibit #3 was two (2) pages and consisted of the April 23, 2019, First Report of Injury and the April 23, 2019, Form PECD 1.

Witnesses:

During the hearing, Mr. Morris (Claimant, used interchangeably herein) and Mr. Trey Franks, Claimant's supervisor, were the only witnesses to testify.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the evidence and other matters properly before the Commission, and after having had an opportunity to hear the testimony of the witnesses and observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012).

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. I hereby accept the above stipulations as fact.
3. Claimant failed to prove that he sustained compensable injuries to his head, neck, back, left shoulder, left hand, right hand, left leg, and left foot when he fell while working for Respondent-Employer on August 8, 2018.

**CASE IN CHIEF**

**Hearing Testimony:**

Claimant was fifty-nine (59) years old at the time of the hearing. He had a twelfth-grade education and had obtained his CDL. He testified that he had worked for the Arkansas Forestry Commission for thirteen (13) years and nine (9) months. He stated that his job title was Ranger 2, and his job duties included, but were not limited to, fighting forest fires, maintaining equipment, checking the seedlings, and assisting with reforestation.

Claimant testified that he had an accident at work on August 8, 2018. He described the incident as follows:

Well, we had a fire the previous day, and myself and Mr. Franks had went out to walk the fine (*sic*) line and make sure the fire was secured and to remap it, I guess, get a good accurate acreage of it. And I was walking along the fire line and tripped and fell. I mean, I don't know what I tripped over or what. I just hit the ground.

As for his injuries, Claimant testified that:

A: Well, I'm saying that I messed up my - - I had to have a cervical fusion, and I already had somewhat of some back issues a little bit from previous, but it really irritated and flared that on up even worse. I don't know what the proper wording would be, but it aggravated the heck out of the lower back. I got numbness. I got peripheral nerve damage in my feet, up and down my leg. My hand's numb. I don't know if I need to be more specific than that.

Q: And I believe - - did you injure - - I have some other injuries listed in the prehearing questionnaire and on the Form AR-C: head injury, left shoulder, both hands, left leg, left foot, neck and back. Does that cover everything?

A: Well, it was mostly my head and neck and stuff is what hit the ground, but later on the other stuff kept getting worse. Yes. By the time the medical records was done I was starting to have trouble with that.

Upon further questions, Claimant testified that he began to seek treatment on January 9,

2019. Specifically, Claimant testified as follows:

A: The very first medical - - well, I started trying to get treatment on, I'm going to say, January the 9th. I'd actually went to the doctor on August the 29th. The accident was the 8th, I believe. I don't know. I might be getting the dates - - but it was all in August. And asked about it - - now - - about my hand and he said it was most likely carpal tunnel, that we'd take care of it when I got ready to take care of it. Well, I proceeded on, maybe it would get better, and by January 9th I just had to make another appointment. And at the same time with Christmas and Thanksgiving I'm thinking, "Well, if I can make it to the first of the year, then I'm going to have to really get - - get started on getting to the bottom of this, and by that time I was - - it was just snowballing on me. I mean, I could barely walk and stuff then.

Q: Okay. So you got some medical treatment in you said August 29th of 2018? Was that with Dr. Coleman?

A: Well, I really didn't - - I just ran it by him. Yes, that was at Dr. Coleman about some numbness in my hand. I just ran it by him then, as best I recollect, and he just said it sounded like carpal tunnel, that we'd take care of that when you get ready, and then by January the 9th I told him I had to do something now. I mean, I got - - whatever we got to do. It seemed to be more than just my hand and carpal tunnel.

Q: Okay. Were you having any numbness in your hands prior to your fall on August the 8th of 2018?

A: I wasn't having any permanent, if it was any. I mean, you go to sleep, you lay on it or something, I mean, that sort of stuff, but nothing that's - - just

lingered on, never went away. I mean, after that, it set in and never went away.

Q: Okay. And so you went back to Dr. Coleman in January of 2019? What did he do for you at that time?

A: I believe he x-rayed my lower back at that time and set me up an appointment for a nerve conduction test.

Claimant continued by explaining that the nerve study showed that he had borderline carpal tunnel in both his right and left hands. Claimant stated that he was not having the carpal tunnel symptoms at the time of the August 8, 2018, incident. Specifically, Claimant testified that:

Q: But you weren't having these symptoms before August the 8th of 2018?

A: No. This was coming on when I went back for the nerve test. And actually my right hand - - I didn't even know anything was wrong with my right hand at the time. My left hand was more, but now my right hand is. I mean before I had the surgery. My right hand is numb somewhat, too, but not as bad as my left hand.

Claimant testified that he underwent injections in his wrists as treatment for carpal tunnel syndrome; however, the injections did not provide any relief for his numbness. As a result, he was sent to Dr. Hussey at OrthoArkansas for x-rays of his shoulder and elbow. Claimant stated that the x-rays revealed an issue with his neck, so Dr. Hussey referred him to Dr. Paulus. After an MRI of Claimant's neck, Dr. Paulus ultimately referred him to Dr. McCarthy, a spine surgeon, for his back and neck. Claimant ultimately underwent a cervical fusion surgery, performed by Dr. McCarthy. Claimant testified the fusion seemed "to help the nerve damage on the pain somewhat," but he was still experiencing issues with his coordination, motor skills, and weakness. He stated, "So, yes, I'd say it helped, but it certainly wasn't a complete cure."

According to Claimant, he did not report the injury to his superiors at the Forestry Division since his supervisor, Mr. Franks, was with him when the incident occurred. He did not complete

any paperwork and explained that he did not know the extent of his injuries at the time. As for why he did not complete a report of injury form until April 23, 2019, Claimant testified:

A: Why there wasn't? Well, I didn't know the extent of the injury. It was actually when they did the MRI when I realized that it was that extensive, I mean. I didn't miss any work or anything. I was going back and forth to the doctor trying to get to the bottom, but I didn't know it was going to be that extensive. I mean, at first you just feel like it's a pull or a torn muscle or something, a little soreness and stuff in there, and then it just keeps getting worse and worse from that point, so . . .

According to Claimant, he was involved in a prior work incident on October 19, 2015. With regard to that incident, Claimant testified as follows:

Q: Okay. And on the reports that your former employer has introduced, it states that your injury occurred on October - - in October of 2015. Explain why that is in the report.

A: Well, I had an incident on that. That's the lower back. That's where it really started, and I assumed that they want to start from the beginning of the injury. I mean, I didn't know anything about the workers' comp situation - - procedures or anything like that, and I started at the - - where the beginning of it all of it started. And then the neck injury was on August of '18. And the lower back started out - - the first incident was on a fire in '15, so that's where the '15 came in. that was the beginning of the whole spinal mishap situation.

Q: So you're claiming that you sustained an injury to your back in 2015?

A: I did in my lower back. I had an injury, which I was recovering from. Well, I wasn't - - I'm not going to say I was completely recovered from it, but it was better and I was still able to work.

Q: Okay. And so you didn't miss any work after the injury in 2015?

A: No.

Q: Was that a fall as well?

A: No. It was an incident on the dozer. I broke over an embankment there, and it lunged me forward, kind of a whiplash-type situation in a dozer. Come to a sudden stop.

Q: Did you get any treatment for that injury?

A: No.

Q: Okay. So the back injury wasn't preventing you from working between 2015 and 2018?

A: No, ma'am.

Q: All right. And you testified earlier that you feel like the August 8, 2018, injury aggravated the back injury. Was that from 2015?

A: Yes.

Q: Okay. Did you have any other injuries between August the 8th and June the 5th of 2019?

A: Not that I know of.

Claimant further testified that after the August 8, 2018, incident, he continued working for Respondents up until two (2) or three (3) days prior to his April 27, 2019, neck surgery. While he was recovering from his neck and his back surgery, he was off work for approximately seven (7) months; however, he had a significant accumulation of sick time that he was able to use for the entire seven (7)-month period.

Claimant returned to work on November 18, 2019. He stated that when he returned to work, he was unable to pass the "walk" test, which was a type of physical fitness test. He testified specifically to the following:

Q: Okay, okay. So the Respondents also introduced a letter regarding your retirement, and it states that you were approved to return to work without restrictions but you had several walk tests that you couldn't pass; is that correct?

A: That's correct.

Q: Okay. And eventually, whenever you couldn't pass the walk test, did you retire at that point?

A: Well, I was actually terminated I would more or less say, and I did sign up on my retirement so I could keep my insurance going and all.



Q: Okay.

A: It wasn't an option, I mean. I guess - - I mean, I could or could of not, but if you're not going to be able to work, why wouldn't you sign up on your retirement and keep your health insurance at least?

Q: Okay.

A: Yes.

Q: Was it a condition of employment to be able to pass the walk test?

A: That was my understanding. I can't speak for what it was. My understanding, if you didn't pass the walk test, I was no longer going to be an employee there. I mean, I couldn't do my job duties.

Q: Do you feel like the fall on August the 8th of 2018 and resulting surgeries is the reason you couldn't pass the walk test?

A: Absolutely.

Q: Okay. Prior to August the 8th of 2018 were you working at full duty without any problems or restrictions?

A: Prior to?

Q: Prior to the fall on August the 8th of 2018.

A: Yes.

Q: Okay. All right. Other than the incident with the bulldozer that we talked about in October of 2015, had you had any other back injuries?

A: No.

Q: Have you even before August the 8th of 2018 had any other neck injuries?

A: No.

Q: Okay. Prior to August the 8th of 2018 have you ever had any head, shoulder, hand, leg, or foot injuries?

A: What are you calling an injury? A medical injury?

Q: Yes, sir.

A: No. Not doctors, I mean. Yes. I'd say no.

As it related to Claimant's surgery, he testified that his neck surgery was considered urgent and he was encouraged to undergo the cervical fusion as soon as possible. He also testified that the cervical fusion procedure and low back procedure were covered by his health insurance.

Claimant also testified that if he had not suffered the fall on August 8, 2018, he believed that he would still be working for the Forestry Division and would be physically able to perform the job duties. He stated that he had not looked for work since leaving his job at the Forestry Division because he did not believe there was anything that he could do based on his qualifications. His past jobs included significant lifting or manual labor. He stated that he was able to read and write and could use a smart phone "somewhat."

On cross examination, in reference to the October of 2015 incident, Claimant testified that he experienced a kind of whiplash injury when the bulldozer he was operating came "over an embankment" and "hit the ground." Claimant testified that he did not obtain medical treatment and did not file a workers' compensation claim after the October of 2015 incident. Claimant also testified that he continued to have symptom "flareup" and symptoms that would "come and go" after the October 2015 incident on the dozer.

According to Claimant, on the day of the August 2018 incident at around 11:00 a.m., he was walking a fire line (which he described as a bumpy, dirt road through the woods) with Trey Franks when he tripped and fell. He stated that he had dirt on the right side of his face, in his mouth, and on his glasses from hitting the ground. When asked about having dirt on the right side of his face after the fall, Claimant responded, "It was on this side, and they couldn't understand why my left side was so messed up when the right side of my head hit the ground." Claimant described his fall, stating that he initially felt pain and popping in the vertebrae of his back. Once

Mr. Franks helped him up, they continued walking around the fire line for one-half (1/2) to three-quarters (3/4) of a mile. Claimant was able to complete the walk, and his initial pain in his back eased up somewhat as he continued to walk. He also stated that he was able to continue his duties for the remainder of the day, until around 4:30 to 5:30 p.m.

When questioning Claimant about a conflict in his deposition testimony and his hearing testimony, Counsel asked the following:

Q: Okay. The reason I asked you about that was when I asked you on October the 19th of last year when I took your deposition I asked you that very question. I think you gave me a different answer a few months ago. On page 34 of your deposition I asked you: "After you fell, did you know you were injured?" and on October the 19th of last year you didn't mention anything at all about vertebrae popping in your back because I asked you the question and your answer to me was you felt like you kind of pulled a muscle in your left shoulder. Do you remember telling me that at your deposition?

A: Well, yeah, I probably - - well, not really, but yeah, I mean that's what it did kind of feel like, that you tore a muscle, like you caught yourself. That would have been in addition to the other stuff that I'm talking about too. I felt like I had a little bit of a crick in my neck and a pulled muscle in my shoulder, like a broke the fall with my left hand. But that wasn't even near as bad on that particular day as it got to be the next day - - that night and the next day.

Q: Okay. We'll get to the next day in a minute - -

A: Okay.

Q: - - but right now I'm asking you about what you told me at your deposition about how you felt right after you fell.

A: All right.

Q: And I'm going to ask you again. Do you disagree with me that when I took your deposition and when I asked you did you know you were injured, would you agree with me that you didn't tell me anything that day about you felt all of the vertebrae pop in your back? You didn't tell me that, did you?

A: Well, I'm going to say if you said I didn't, I didn't. I mean, I might not have got into that extensive detail of it, but if you say I didn't I may not.

Q: It's not in your deposition. I'll tell you that.

A: Well, I'm not arguing about it because, I mean, I could've or could've not. It could have slipped my mind. I mean, I don't know.

Q: And so you did tell me that you felt kind of like you pulled a muscle in your left shoulder. You told me that at your deposition. My question to you this morning is: Can you explain or do you remember how it would be that if you fell on the right side and landed on the right side of your head, can you remember doing any activity with your left arm or shoulder as you were falling that might have caused damage to your left shoulder?

A: I've thought about that. I don't know unless I didn't even break myself with the right and the left hit it and it spun me over to the right side. I got no idea about all that. No, I don't recall none of it. It don't make sense to me either - - that part don't.

Counsel further questioned Claimant about the period of time immediately after his fall. Counsel's questions and Claimant's responses were as follows:

Q: You talked about walking on Old Warren Road - - off Old Warren Road, you fell, you hit the ground, you got up. You told me at your deposition, "I think I told my supervisor I was all right." Do you recall telling me that?

A: Well, he asked me if I was going to be able to make it on or whatever, and I thought I was all right. I think I'm going to be all right or something like that to that effect. Yes.

Q: Well, on page 33 of the deposition I'll tell you what you said and see if this refreshes your memory, okay? I asked you:

"So after your fell, tell me what happened after that."

And you started talking, and you said, "As best I recall, my supervisor, he kind of stared at me kind of hard and asked me if I was all right, and I think I told him, 'I think I will be.' I don't know. And then we went on."

Is that what you - - can you remember telling me that?

A: Well, I don't remember telling you that - - all that right there, but, I mean, it sounds like it could have been something that was discussed. I don't know.

Q: When I took your deposition on October 19th of last year - -

A: I'm sure - -

Q: Let me finish my question if you don't mind.

A: Okay.

Q: Do you recall the court reporter swearing you in to tell the truth before we started your deposition?

A: I do.

Q: Okay. And you told me that day, "As best I can recall, my supervisor stared at me kind of hard and asked me if I was all right, and I think I told him, 'I think I will be.' I don't know."

A: Well, I don't know about the staring-at-me-kind-of-hard situation. I'm sure he did ask me if I was going to be all right, and I'm sure I told him I think so or something to that effect - -

Q: All right.

A: - - I mean, but . . .

Q: And then you continued to walk another half to three-quarters of a mile to then go get in the truck; right?

A: Yes, yes.

Claimant admitted that he did not immediately seek any medical attention for any of the alleged injuries after the fall. Claimant saw his primary care physician, Dr. Coleman, on August 29, 2018, a couple of weeks after the fall; however, Claimant admitted during his testimony that the appointment was a regular follow-up appointment for his cholesterol. When questioned as to what symptoms he was having on August 29th, Claimant testified:

A: Well, I believe my hand was starting to get a little numb, and that's whenever carpal tunnel - - the best I recollect, that's when the carpal tunnel deal came up as we'll take care of that when you get ready to. I said, "We'll see if it gets any better or not, and if it gets any worse." And that's the best I recollect that was going on on that because it was just a regular 6-month

checkup that I went to him on. I mean, it wasn't just for this neck and shoulder injury.

Q: Okay. I get all that. Here's my question to you, though, and you may have just answered it. But from August the 8th when you fell until you saw Dr. Coleman on August 29th can you tell the judge today what symptoms you were having during that 3-week period of time after you fell? You just told me about you noticed some numbness in your hands; correct?

A: Correct.

Q: Did you notice any other symptoms during that 3-week period of time?

A: Well, I had a sore shoulder and felt like I had a little bit of a touch of a crick in my neck.

Q: Okay. Anything else?

A: And I'm not even sure all that was as severe until later on. Well, I don't know what all I had going on at that time. I don't recall anything else. I don't know what I told him.

When further questioned about Dr. Coleman's clinic notes and why the notes stated that Claimant had complained of left-hand numbness and tingling for six (6) months, Claimant was unable to explain. He stated that he was unsure if he told Dr. Coleman that he had experienced numbness and tingling in his left hand for six (6) months. Dr. Coleman's report also indicted that Claimant had experienced back pain and left foot weakness for six (6) months. Claimant testified that he did not "remember the 6-month ordeal going on," but that his back pain had been present on and off since 2015. Claimant also admitted that Dr. Coleman's notes did not include a report of him falling on August 8, 2018. Claimant stated that he may not have told Dr. Coleman about the fall because he "probably didn't figure it was that serious at the time."

Claimant testified that he did not see another doctor until he returned to Dr. Coleman on January 9, 2019. Dr. Coleman's notes reflect that Claimant presented with a history of intermittent lumbar region pain which began six (6) months ago. Dr. Coleman's notes also stated that, "The

onset of the back pain was gradual and began without a clear precipitating event.” When questioned about these statements in the medical record, Claimant testified:

Q: This report on January the 9th - - page 5 of Exhibit No. 1 - - mentions nothing at all about you fell on August the 8th, 2018, walking down the fire line. Did you ever tell Dr. Coleman that?

A: I didn't even know I was actually injured that day at the time. I was thinking it was something else had to do with blockage in your veins or something else. I didn't know it was that extensive nerve damage at that time. That it even - - that I wasn't going to get totally recovered basically other than - - and go on about my work, keep on working until retirement time. But I - - I'm sure I didn't tell him, I mean, that I fell at work. I mean, it was a fall that I didn't even really think that much about at the time. I figured I was going to get over it. I mean, everything I've done in my whole life before I got over it and went on and didn't expect anything different.

Q: So you've had two doctor's appointments, and you've testified that these symptoms with your neck and tingling and numbness and all that, they were getting worse, if I heard you right; correct?

A: Right.

Q: But yet you didn't tell Dr. Coleman on either of the two times you were there to see him, did you?

A: I'm sure on the 9th of January I told him about all of it, but I can't say. I mean, I don't ...

Q: Well, if you're sure you told him on January the 9th can you explain why there's no mention at all in the medical record about you telling him that?

A: I can't. I can't explain none of that.

On cross examination, Claimant admitted that as of January of 2019, he had not reported the injury to anyone at work and had not informed any of his superiors that he wanted to file a workers' compensation claim.

Moreover, Claimant admitted that he started seeing Dr. Coleman, and later saw Drs. Frigon, Grynwald, Hussey, Paulus, and McCarthy for his symptoms. He was eventually cleared of carpal tunnel syndrome. However, he did not report to any of the specialists that he thought his

problems were related to stumbling and falling on August 8, 2018. Claimant specifically stated, “I told them I’d been falling and stuff, but I didn’t necessarily tell them at work or that I’d had a fall, but I don’t know that it actually was at work.”

Claimant also testified regarding his first visit to OrthoArkansas on March 4, 2019.

Specifically, he stated:

Q: Mr. Morris, let me hand this page to you. This is what I’m referring to. It’s not the best copy in the world, but we’ll try to make it through. But that looks to be, if I’m reading the title right, a “New Complaint History Form.” It looks like they asked you for some information. I see your name, date of birth, that kind of thing. It says your chief complaint that day: “shoulder pain and numbness in your hand. Where does it hurt: On the left. How badly: Moderate.” And it says “How long has this been hurting?” And that says “six months to one year.” Do you see that?

A: I see the six months to a year.

Q: So let me ask you: Is that your writing there at the top of that form?

A: Yes.

Q: Did you fill that out?

A: Yes.

Q: All right. Then the next question asks, “Was this an injury?” And my form has the word “no” circled. Do you see that?

A: Was this an injury?

Q: And look over, it has yes and no. On mine the no is circled. Do you see that?

A: Oh, yes, I see that.

Q: Did you circle no when you were asked was this an injury?

A: Well, I did. I’m sure I did because I didn’t know if was an injury or just carpal tunnel. Yes, I didn’t know what was going on on that. I mean, it could’ve been carpal tunnel, which didn’t - - really wasn’t an injury or whatever. I mean, I didn’t know what was the problem. I mean, yes.



Q: Well, would you agree that at least reading this form there's nothing on there that indicates you told them that you stumbled and fell on August the 8<sup>th</sup>, 2018, and that's what was causing your problem? That's not on this form anywhere, is it?

A: It's not, and I didn't know the stumbling and falling was the total cause of all of it.

Q: And did you sign and date that form on the bottom of it?

A: I did.

...

Q: All right, Mr. Morris. So that was in March of 2019, and at least if I'm reading that right, you began your treatment at OrthoArkansas by telling them, at least based on that form, that this was not - - your symptoms were not because of an injury if we're to believe that form. Would you agree with that?

A: I - - you can believe that because I didn't know it was actually due to the injury so much. I thought it was more blockage or an artery blockage or something like that was causing it more so than the nerve-injury deal, so yes.

When questioned by Counsel as to the OrthoArkansas report from March 4, 2019, which stated that Claimant's neck pain was "mild," Claimant confirmed that the report was likely accurate for that day. He noted that some days his pain was worse than mild. Counsel also questioned Claimant about another statement in that report which revealed that Claimant "denie[d] any injury." Claimant responded:

A: I can't explain that. I mean, I know I've been denied workers' comp, and they asked me some stuff if it was workmen's comp, if I thought if I was going to file on workers' comp, and I know I put no on that. But that don't mean that it wasn't an injury because I've been denied. I couldn't file it on workers' comp.

Q: Well, now wait a minute. That's not true. Now, in March of 2019 you had not even filed workers' comp, had you?

A: Well, no. No, I mean. You're right on that.

...

Q: And then the next sentence - - I was just going to ask you: It says “The patient,” meaning you, “states he is a forest ranger for Jefferson County.” Do you dispute that you told them that - - that you were a forest ranger for Jefferson County?

A: No, I can’t dispute that.

Q: So they evidently surmised that you were having mild neck pain, you denied any injury, and they knew you were a forest ranger, but yet there’s no mention at all about you stumbling and falling on August 8, 2018, in these reports.

A: Okay.

Counsel continued with questioning Claimant regarding another OrthoArkansas medical record from March 12, 2019, containing questions regarding Claimant’s medical history. The form asked for Claimant’s response to a question about the duration of Claimant’s symptoms and the date of onset. Claimant responded that he answered “3” and “1918” as the date of onset. When asked to explain the answer, Claimant stated that he was not being precise, was guessing, and was “backdating on a lot of that.” Claimant stated that he was unclear about the precise date when he was visiting the doctor’s office, so he just “put it down as it’s been going on - - ongoing.” However, Claimant admitted to being able to remember the August 8, 2018, date clearly during his testimony at the hearing.

Claimant was also questioned about a medical record from Dr. Stephen Paulus at OrthoArkansas on March 12, 2019, approximately eight (8) months after Claimant’s August 8, 2018, fall at work. Opposing Counsel asked Claimant about the “Assessment/Plan” portion of the doctor’s notes, which stated that Claimant had presented with one (1) year of aching, throbbing, numb radiation into his arms and left leg. Claimant testified that he did not recall telling Dr. Paulus

that he had experienced those symptoms for a year, but that his symptoms had been going on for some time, particularly the low back pain.

Claimant further testified that his neck surgery was scheduled for April 26, 2019, and that he called the company nurse hotline on April 23, 2019. When asked if the scheduling of the neck surgery prompted him to make the call to the nurse's hotline and begin the reporting process for a workers' compensation claim, Claimant responded, "Well, they'd - - when I filled out the paperwork they actually - - I don't know. It had something to do with that, yes, because I didn't see the point in having to fool with all that. I really wasn't able to fool with all of it, but I took care of it anyway." Claimant also agreed that while he did not remember the details of his call to the company nurse, the notes from his call indicated an accident date of October of 2015 and listed his medical complaints of pain in both shoulders, neck, and low back. Claimant also confirmed that after the claim was denied due to the statute of limitations, Claimant completed and filed a Form AR-C on May 30, 2019. Claimant also confirmed that the Form AR-C reflected an accident date of August 8, 2018. When asked if Claimant stated on the Form AR-C that he "fell in fire line – neck," Claimant answered, "I probably did."

Claimant also testified as to a second Form AR-C that he filed a couple of months later on August 1, 2019. Claimant confirmed that he indicated that he was injured when walking a fire line, injuring his head, neck, back, left shoulder, left hand, right hand, left leg, and left foot. When asked if these newly listed symptoms were present when he filed the first Form AR-C, Claimant responded, "Oh, I'm sure all these here was even from the other one. I mean, I wasn't aware that we had to - - let's see - - put all of this down on that first one because the lower back - - I mean, I know I had lower back problems and I had neck problems at the time all this was done, but most all of this - - the lower back had been going on since '15 somewhat off and on, but it got even

worse on that 8/18, and I had all of what was on both forms really by this point in time was a problem - - my neck and the lower back.”

According to Claimant, he returned to work in November of 2019, after his neck surgery in April of 2019 and his low back surgery in August of 2019. He stated that upon his return to work, he was attempting to get in shape so that he could pass his walk test, which was essentially a physical fitness test requiring him to walk a mile in under sixteen (16) minutes. While he was trying to improve his strength, he would perform other job duties. Specifically, he assisted a fellow employee as he was working to obtain his CDL. Claimant spent time riding with him and instructing him. Claimant confirmed that during that time he was able to get in and out of the large truck that his fellow employee was driving. He testified that overall he improved somewhat between the time he returned to work in November of 2019 until his retirement in July of 2020. He also stated that the pandemic slowed down testing at work and resulted in some tests being cancelled; however, he was able to take a couple of walk tests during that timeframe. Yet, he was not able to improve enough to pass the test and ultimately perform his job duties.

Claimant admitted that he was released to return to work with no restrictions, but that he elected to retire on July 31, 2020. He was receiving \$828 monthly in retirement benefits and had just begun receiving Social Security Disability benefits of \$1,658 monthly.

As of the hearing date, Claimant did not have any return appointments with any of his treating physicians. He stated that he took gabapentin and ibuprofen, and while he did not require the use of a cane, he kept one in his truck for days when he had to walk on uneven terrain. Claimant testified that since his retirement, he had not looked for other work because he was not sure if he would be able to hold down a job. However, he also stated that, “I’m not beyond working, but I just don’t see how I’m going to be able to hold up to it.”

Claimant testified that he was able to read and write and that he had driven himself fifty (50) miles to the hearing. At his deposition, Claimant testified that he was able to mow the approximately thirty-two (32) acres where he lives; he was able to do laundry; he was able to prepare his own meals; and he was able to dress himself. Also at his deposition, Claimant testified that he thought there might be work available to him at the casino in Pine Bluff, but as of the date of the hearing, he testified that he had not inquired about suitable job openings there. Claimant stated that he was able to use a computer “a little bit;” he still had his CDL; and he had previously done some work as a welder, a pipefitter’s assistant, a dump truck driver, and an electrician’s assistant.

On re-direct examination, Claimant reiterated that he did not believe he had to make a report of his injury because his supervisor was present and that he did not fully realize the extent of his injuries until he had an MRI on his back. Claimant further acknowledged that he was having prior symptoms in his back before August 8, 2018, but had not received any medical treatment for his back, neck, or hands prior to August 8, 2018. Claimant also testified that he reported to MedExpress on April 23, 2019, that he had an injury at work that irritated his condition.

Lastly, Claimant stated that he did not sustain any injuries to his back or neck other than in 2015 and 2018.

Mr. Trey Franks testified that he worked as a District Forester for the Arkansas Forestry Commission (renamed Forestry Division under the Agriculture Department). He was Claimant’s supervisor. Mr. Franks testified that he remembered an incident in 2015 when Claimant was experiencing back pain and was unable to load the dozer onto the trailer. After that time, Mr. Franks noticed Claimant having some back pain “here and there,” but he believed it to be “an age thing.”

Mr. Franks was with Claimant on August 8, 2018. He described the incident as follows:

We parked on the side of the paved road, and we left the truck there walking down the fire line, which is a like a disked up field is what it kinda looks like in the outcome. And we were like 30 yards or so from the vehicle - - 30 to 40 yards from the truck, and then he tripped over a large dirt clot is what caused - - I kind of looked back and seen what he tripped over. And he did hit the ground awful hard, and then as I was helping him get up, like, I asked him, like, “Are you okay?”

And his comment was, “I’m not sure.”

Because as soon as I stood - - he was still standing - - trying to get him stood up and stay still because he was shaky, waiting for a little bit - - a few seconds, and then I asked him again, “Are you okay? Because we’re close to the truck, we can go back.”

“No.” So we continued on.

Mr. Franks confirmed that after the fall, Claimant told him that he was all right, and as a result, they continued their walk to map out the fire line. He testified that Claimant was able to finish the job. When it was complete, it was close to the lunch hour, so they returned to the office. Mr. Franks did not remember Claimant complaining of any pain after his fall. He did remember Claimant complaining about numbness, but he was unsure of the timing of the complaints.

Mr. Franks also testified as to the procedure for reporting workers’ compensation claims at the Forestry Division. He explained that the first step in the process was to call the nurse’s hotline, unless a hospital visit was immediately required. Afterward, an incident report would be completed and presented to the human resources department. Mr. Franks stated that Claimant should have been aware of the necessary step of calling the nurse’s hotline as it was something they discussed as an agency and the poster explaining the procedure was located near Claimant’s office.

Mr. Franks stated, “It really never dawned on me that he was probably injured from that incident, if he was hurting or anything. We never really tied - - like us as the office probably never

discussed to talk about it to tie it back to that - - that he got hurt on the incident.” He stated that Claimant kept working after August 8, 2018, and that he did not recall a time when Claimant was unable to do an assignment or task that he was asked to do at work. Mr. Franks was aware that Claimant was experiencing the numbness and that he was “kind of going downhill,” so he was not surprised to learn that he called the nurse’s hotline in April or May of 2019. Mr. Franks stated that he did not know if Claimant’s numbness was a work-related issue or just age and wear and tear on the body. He testified that Claimant had not complained of numbness prior to the fall on August 8, 2018. After the surgeries on Claimant’s neck and low back, the Forestry Division was able to accommodate Claimant in that he was given time at work to walk and prepare for his physical. Afterward, Claimant could participate in other work assignments “if he wanted to help.”

Mr. Franks explained that it was the Forestry Division’s policy that employees must pass the physical fitness test at the end of the calendar year. If an employee failed the test, the Division would have to require a waiver for an extension of time to pass the physical fitness test. He stated, “So it’s kind of a - - you know what’s coming, and if retirement’s an option, we’d much rather you take retirement instead of us having to terminate.” Claimant had three chances. One was the normal scheduled walk and two were makeups. Mr. Franks had been in communication with Claimant before the test and had asked Claimant if he was improving, to which Claimant responded that he was not getting any worse and was holding steady.

Medical Exhibits:

On August 29, 2018, Claimant was seen by Dr. Doug Coleman, his primary care physician, for a six (6)-month follow-up appointment for his cholesterol. Dr. Coleman’s notes indicated that Claimant complained of numbness and tingling in the left hand for six (6) months, along with back

pain and left foot weakness for six (6) months. Claimant was assessed with hypercholesterolemia and obesity.

On January 9, 2019, Claimant returned to Dr. Coleman with complaints of pain in his lumbar spine which began six (6) months prior. Dr. Coleman's notes indicated that Claimant's onset of back pain was gradual and began without a precipitating event; that Claimant was still experiencing tingling and numbness in the left hand and fingers; and that he complained of dragging of his left foot. Dr. Coleman ordered a nerve study for Claimant's numbness and tingling in his left hand.

Claimant saw Dr. Jacquelyn Frigon, a neurology specialist, on January 15, 2019, for a nerve study, which revealed "borderline B carpal tunnel syndrome and R ulnar entrapment at the elbow." Dr. Frigon's clinic notes stated that pressure on the elbow should be avoided but that the remaining studies yielded normal results.

Claimant saw Dr. Kirk Grynwald at OrthoArkansas on January 23, 2019, when Claimant was administered bilateral carpal tunnel injections. When Claimant returned to Dr. Grynwald on February 26, 2019, for the numbness and tingling in his arms, he reported no improvement after the injections. Clinic notes revealed that Claimant reported a history of frequent unexplained falls.

On March 4, 2019, Claimant saw Dr. Michael Hussey at OrthoArkansas. Claimant completed a New Complaint History Form wherein he noted as his chief complaint pain in his left shoulder and numbness in his left hand. Claimant also reported on the New Complaint History Form that his pain was "moderate;" that he had been in pain for six (6) months to one (1) year; and that the pain was not the result of an injury. Dr. Hussey's clinic notes from March 4, 2019, indicated that while Claimant reported left shoulder and chest wall pain, his primary complaint was the numbness and tingling in both of his hands, specifically in his ring and small finger.



Claimant reported “only mild neck pain” that day, and Claimant “denie[d] any injury.” An x-ray of Claimant’s left shoulder revealed no obvious sign of trauma; glenohumeral and acromioclavicular joints were well aligned; no significant osteoarthritis of the glenohumeral joint; and moderate osteoarthritis of the acromioclavicular joint. An x-ray of Claimant’s cervical spine demonstrated normal joint alignment; significant arthritis of the spine especially at the C4 through C6 levels with large protruding anterior osteophytes present; and disc space collapse at the C4 through C6 levels. Dr. Hussey opined that Claimant’s concerns were primarily from his cervical spine and instructed him to return to Dr. Paulus for his back.

On March 12, 2019, when Claimant returned to OrthoArkansas to see Dr. Stephen Paulus, he completed a History Form wherein he reported that his chief complaint was “pin needles in hand, balance, left leg drag[g]ing, walk gait.” He reported that the onset date of his symptoms was “3-1918” and that his symptoms were constant. When Claimant saw Dr. Paulus, his clinic notes revealed that Claimant complained of one (1) year of “aching, throbbing” left-sided neck and low back pain with “tingling and numb” radiation into bilateral arms and left leg with unclear aggravating factors. After a physical examination, Dr. Paulus ordered MRIs of Claimant’s brain, cervical spine, thoracic spine, and lumber spine, which were taken on April 9, 2019.

The imaging of Claimant’s brain showed no acute intracranial findings but revealed ethmoid and left maxillary sinusitis. Claimant’s MRI of his lumbar spine revealed the following: large left paracentral extrusion of the L1-2 disc; moderate acquired central spinal canal stenosis at L1-2; small central protrusion at L4-5; annular bulging of the L2-3 though L5-S1 discs; small right paracentral annular fissure of the L5-S1 disc; mild facet arthropathy at L2-3 through L5-S1; and multilevel neural foraminal stenosis. Claimant’s thoracic spine revealed a small right paracentral protrusion at T8-9. The imaging of Claimant’s cervical spine revealed the following: annular

bulging with posterior osteophytic ridging present at C3-4 through C6-7 levels; a right paracentral extrusion of the C5-6 disc; severe acquired central spinal canal stenosis at the C4-5 level; marked compression of the spinal cord at C4-5; presence of T2 increase signal intensity in the spinal cord, compatible with myelomalacia or cord edema; moderate central spinal canal stenosis at C5-6 and C6-7 levels; and uncovertebral joint hypertrophy producing bilateral neural foraminal stenosis.

Claimant underwent a nerve study on April 10, 2019, as ordered by Dr. Paulus. The results of the study revealed that Claimant did not have carpal tunnel syndrome, cubital tunnel syndrome, or generalized peripheral neuropathy in the bilateral upper limbs or nerves that were tested. Ultimately, Dr. Paulus referred Claimant to Dr. McCarthy.

On April 16, 2019, Claimant saw Dr. Kathryn McCarthy at OrthoArkansas. Claimant completed a History Form, stating that his chief complaint was numbness in his hands, left leg dragging, and left shoulder pain. He indicated the symptoms had been present for two (2) years and were constant. Dr. McCarthy's notes from April 16th indicated that Claimant had some degree of neck pain for some time but had developed severe dysfunction of the left arm with weakness, weakness of the left leg, and difficulty with his gait. Claimant reported some degree of numbness and tingling in his hands and not being able to button his pants. Dr. McCarthy noted that Claimant's pain seemed to have worsened over the last several months. Based on Claimant's issue with his cervical spine, where there was significant bruising at the spinal cord level, and the large disc herniation at L1-2, which could have been causing some of the dysfunction in his left leg, Dr. McCarthy recommended Claimant undergo a C4-C6 anterior cervical decompression fusion with allograft and plate fixation.

On April 23, 2019, Claimant presented at MedExpress with complaints of neck pain. Clinic notes included a notation about Claimant's pre-existing neck and back condition and revealed that

Claimant reported on April 23rd that he had suffered an injury at work that had irritated this condition. Claimant's upcoming surgery by Dr. McCarthy was noted, and Claimant was taken off work.

On April 27, 2019, Dr. McCarthy performed an anterior decompression with correction of the posterior longitudinal ligament, and arthrodesis, C4-5 and C5-6; instrumentation, anterior C4-5; and insertion of interbody spacer, anterior C4-5 and C5-6.

When claimant returned to Dr McCarthy for a post-surgical follow-up appointment on May 22, 2019, Dr. McCarthy's assessment indicated that Claimant was "doing well" but had some numbness in his fingertips, numbness on bottom of his feet. He had no left leg pain, and his left arm pain was "markedly improved." Claimant reported an increase in strength in the left arm. She instructed him to continue working within his restrictions, including no lifting of more than ten (10) pounds. Claimant was released to light-duty work, only if light-duty was available. If not, he should remain off work for three (3) months.

On July 17, 2019, Claimant returned to Dr. McCarthy with complaints of an unsteady gait and some discomfort in the left side of his lumbar spine region. On August 15, 2019, Dr. McCarthy performed a left sided L1-2 decompression/discectomy on Claimant.

When claimant returned for a follow-up appointment with Dr. McCarthy on September 25, 2019, she opined that Claimant had some degree of residual left arm dysfunction and referred him to physical therapy for left arm and left leg symptoms.

Claimant's last visit to Dr. McCarthy for a follow-up appointment was on November 13, 2019. Dr. McCarthy stated that Claimant had not had a "robust" recovery from the cervical stenosis and the associated cord signal change, but he had seen some minimal improvement with physical therapy over the last several weeks. Dr. McCarthy noted that Claimant's examination

revealed no focal neurologic deficit of the upper or lower extremities in terms of his strength. That day, she released him to work without any imposed restrictions.

Documentary Exhibits:

Per the documentary evidence introduced by Respondents, a Report of Injury revealed that Claimant did not call the company nurse to report the injury until April 23, 2019, and he reported the date of date of injury as October 19, 2015. Moreover, the Report of Injury reflects that Claimant believed that he was injured at a fire, but he was unsure if he was injured during the fire or afterward when he was loading a bulldozer. Claimant also reported that he had been treated by his primary care physician and that he was scheduled for surgery on Friday of that week.

Respondents also introduced a Form AR-2 dated April 24, 2019, wherein the claim was denied because the accident was barred by the statute of limitations. The form contained an accident date of October 19, 2015.

A Form AR-C dated June 3, 2019, was also introduced reflecting that Claimant was injured at work on August 8, 2018. A description of the injuries showed that he “[f]ell in a fire line – neck.”

On April 23, 2019, Claimant signed a Form PECD 1, wherein he indicated that he had been injured at work on October 19, 2015, and reported the injury on April 11, 2019. On the April 23, 2019, Form PECD 1, Claimant reported that he was injured at a fire on October 19, 2015, but he was unsure if he was injured during the fire or when loading a bulldozer afterward. On June 5, 2019, Claimant signed a second Form PECD 1, wherein he reported the date of accident as August 8, 2018, at 11:00 a.m. when he fell while walking a fire line resulting in a soft tissue injury of the neck. The Form also revealed that Claimant’s first day to miss work was April 24, 2019.

A Form AR-N, signed by Claimant on June 5, 2019, revealed an accident date of August 8, 2018. Moreover, the Form revealed that the accident was reported to the employer on June 5, 2019. Claimant also signed an Employee’s Acknowledgement of Form AR-N on June 5, 2019.

Respondents also introduced a subsequent Form AR-C filed on August 5, 2019, where Claimant alleged that he was walking a fire line when he tripped and fell injuring his “head, neck, back, left shoulder, left hand, right hand, left leg, and left foot.”

Respondents also introduced an April 23, 2019, Workers Compensation – First Report of Injury or Illness reflecting that Claimant had injured himself at work on October 19, 2015, and reported the injury on April 11, 2019.

Claimant testified extensively regarding these documents during the hearing as outlined above.

Also introduced by Respondents was a June 26, 2020, letter authored by Mr. Trey Franks, revealing that Claimant had failed the third “make-up” walk test and that Claimant planned to retire.

### ADJUDICATION

#### Compensability:

In the matter at hand, the crucial issue for determination is whether Claimant suffered a compensable fall while walking a fire line on August 8, 2018, which caused severe injuries to his head, neck, back, left shoulder, left and right hands, left leg, and left foot, resulting in a cervical fusion to correct his C4-5 extrusion with cranial extension of disc material and severe mass effect on his spinal cord. Respondents, on the other hand, assert that Claimant had a history of pre-existing cervical and lumbar spine problems and that Claimant’s surgeries in April and August of

2019 were necessitated by the pre-existing conditions and were not causally related to Claimant's work activities, including the alleged fall on August 8, 2018.

Arkansas Code Ann. § 11-9-102(4)(A) defines "compensable injury" as:

(i) An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.] A compensable injury must be established by medical evidence supported by objective

findings. Ark. Code Ann. § 11-9-102(4)(D). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Id. § 11-9-102(16). The element "arising out of ... [the] employment" relates to the causal connection between Claimant's injury and his or her employment. City of El Dorado v. Sartor, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a Claimant's employment "when a causal connection between work conditions and the injury is apparent to the rational mind." Id.

If the Claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997). This standard means the evidence having greater weight or convincing force. Barre v. Hoffman, 2009 Ark. 373, 326 S.W.3d 415; Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 206 S.W.2d 442 (1947).

Here, testimony showed that Claimant had worked for the Forestry Division for over thirteen (13) years. It is undisputed that he suffered a fall while walking a fire line with his supervisor on August 8, 2018. Despite the fall, Claimant was able to get up, steady himself, finish walking the one-half (1/2) to three-fourths (3/4) of a mile to get back to the truck. He was also able to continue working the rest of his afternoon shift. In fact, both Claimant and Mr. Franks testified that Claimant not only completed all of his employment duties on August 8, 2018, but he

continued working until April 23, 2019, (approximately eight and one-half months) without missing any work as a result of any alleged injuries from the August 8th fall.

Moreover, the testimony and documentary evidence showed that Claimant did not report the fact that he had fallen on August 8, 2018, to any of his superiors at work, nor did he make any attempt to begin the process of filing a workers' compensation claim as a result of the August 8th fall until at least April of 2019--which was approximately eight (8) months later. At that point, Dr. McCarthy had recommended surgery for his neck. Further, the documentary evidence showed that Claimant did not file a Form AR-C until June 3, 2019--ten (10) months after his fall.

According to Mr. Franks, Claimant had worked for the agency for more than thirteen (13) years and was made aware of the process for filing a workers' compensation claim. Mr. Franks' testimony shows that management routinely provided information to its employees about the procedure for filing a workers' compensation claim. They also have posters instructing employees on how to file a claim, which hang just outside Claimant's own office.

Furthermore, the testimony and medical records showed that there was a significant delay between the Claimant's August 8, 2018, fall, and the date that he first obtained medical treatment. Claimant admitted that, other than a routine appointment with his primary care physician (Dr. Coleman) on August 29, 2018, he did not seek medical treatment for the fall until January 9, 2019, which was five (5) months after his fall.

It is noteworthy that Dr. Coleman's August 29, 2018, medical records indicated that the appointment was for a six (6)-month follow-up appointment for his cholesterol. During this follow-up visit, Claimant did not mention to Dr. Coleman that he had fallen at work on August 8, 2018. However, Dr. Coleman did make a notation in this clinic note that Claimant's symptoms of left-hand numbness and tingling, back pain, and left foot weakness had been present since

February of 2018, more than six (6) months prior to the August 8, 2018, fall at work. This evidence strongly suggests that the Claimant suffered prior significant pre-existing symptomatic problems of the cervical and lumbar spine. Likewise, Claimant's January 9, 2019, visit with Dr. Coleman also revealed prior lumbar spine pain since July of 2018. Specifically, Dr. Coleman's notation states that Claimant's onset of back pain was gradual and began with no precipitation event.

Additionally, clinic notes from Claimant's March 12, 2019, visit to Dr. Paulus revealed that Claimant presented with aching and throbbing of the left side of his neck and low back, as well as tingling and numbness radiating into both arms and the left leg, for one (1) year – which was five (5) months prior to the August 8th fall. Further, Claimant admitted during his testimony that he had suffered from back pain since October of 2015. At that time, the Claimant was driving a bulldozer when it hit an object causing him whiplash-type symptoms.

When comparing Claimant's testimony to the documentary evidence presented, I find some inconsistencies that place Claimant's credibility into question. As noted above, testimony and documentary evidence showed that Claimant initially alleged an October 19, 2015, work injury to his low-back on his First Report of Injury and the Form PECD 1, both filed on April 23, 2019, and after Claimant was scheduled for a cervical fusion surgery. However, once that claim was denied as barred by the statute of limitations, Claimant filed a June 3, 2019, Form AR-C, listing a new accident date of August 8, 2018, and changing the description of the injury to a fall injuring his neck. On a subsequent Form AR-C filed on August 5, 2019, Claimant alleged new injuries, including his head, neck, back, left shoulder, left hand, right hand, left leg, and left foot, as a result of the fall at work on August 8, 2018.

Similarly, a comparison of Claimant's testimony to the medical evidence also reveals some significant inconsistencies that diminish Claimant's credibility. While Claimant testified that he



continued to have symptom “flareup” in the low back on occasion prior to the August 8, 2018, fall at work, medical records showed that Claimant had almost identical symptoms (of numbness and tingling in the left hand, lumbar pain, left foot weakness, left shoulder pain, and/or cervical spine pain) for months and even up to a year prior to the August 8, 2018, fall at work. Notably, on March 4, 2019, Claimant reported to Dr. Hussey that he was experiencing “only mild neck pain,” and “denie[d] any injury.” Also of significance, Claimant reported to Dr. Grynwald on February 26, 2019, that he had a history of frequent unexplained falls. Lastly, January 9, 2019, clinic notes from Dr. Coleman indicated that Claimant’s onset of back pain was gradual and began without a precipitating event.

Moreover, medical records also demonstrated that Claimant did not report to his primary care physician or any of the five (5) specialists who ultimately evaluated and treated him that he had been injured while at work or that his symptoms were a result of an incident on August 8, 2018. I note that Claimant was seen at MedExpress on April 23, 2019, where he mentioned a work injury that irritated his neck condition for which he was sent to MedExpress for treatment. However, this was the first mention of any work-related incident to any treating doctors. I give the April 23, 2019, medical record from MedExpress little weight in that it was after Dr. McCarthy had recommended and scheduled a cervical fusion procedure for Claimant’s neck condition.

In a nutshell, I find that the witnesses’ testimony, medical records, and documentary evidence make it difficult to attribute Claimant’s symptoms and injuries to the August 8, 2018, fall at work. Under these circumstances, it would require conjecture and speculation to conclude Claimant’s injuries to his head, neck, back, left shoulder, left and right hands, left leg, and left foot arose out of and in the course of his fall on August 8, 2018. Conjecture and speculation, even if plausible, cannot take the place of proof. Ark. Dept. of Correction v. Glover, 35 Ark. App. 32, 812

S.W.2d 692 (1991); Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979). As a result, I have no alternative but to find that Claimant has failed to prove by a preponderance of the credible evidence that there is a causal connection between his injuries to his head, neck, back, left shoulder, left and right hands, left leg, and left foot and a fall at work on August 8, 2018.

Hence, based on all of the foregoing, I find that the Claimant failed to prove by a preponderance of the evidence all of the statutory elements of compensability for compensable injuries to his head, neck, back, left shoulder, left and right hands, left leg, and left foot.

I recognize that the Arkansas Court of Appeals pointed out in Williams v. L & M Janitorial, Inc., 85 Ark. App.1, 145 S.W.3d 383 (2004), that in workers' compensation law, an employer takes the employee as he finds him, and employment circumstances that aggravate pre-existing conditions are compensable. However, in the case at bar, there is insufficient evidence to prove a causal connection between Claimant's August 8, 2018, fall and his back, neck, and other related conditions.

Having found that Claimant failed to prove by a preponderance of the evidence that he suffered a compensable injury, the issues of temporary total disability, medical benefits, permanent partial disability benefits, and wage loss are rendered moot and have not been addressed. Accordingly, this claim for injuries to Claimant's head, neck, back, left shoulder, right and left hands, left leg, and left foot is respectfully denied and dismissed.

**ORDER**

The Claimant failed to prove by a preponderance of the evidence that he sustained an injury to his head, neck, back, left shoulder, hands, left leg, and left foot as a result of his fall at work on

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August 8, 2018. For the reasons discussed herein, this claim must be, and is, hereby respectfully denied and dismissed in its entirety.

**IT IS SO ORDERED.**

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**KATIE ANDERSON**  
**ADMINISTRATIVE LAW JUDGE**