

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H010141

BOBBIE MOORE, EMPLOYEE	CLAIMANT
MENA REGIONAL HEALTH SYSTEMS, EMPLOYER	RESPONDENT
ARKANSAS HOSPITAL ASSOCIATION/ RISK MANAGEMENT RESOURCES, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED DECEMBER 14, 2021

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE JASON M. HATFIELD, Attorney at Law, Springdale, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed July 12, 2021. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on April 28, 2021 and contained in a pre-hearing order filed that same date are hereby accepted as fact.
2. Claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a

compensable injury to her low back on December 2, 2020.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Therefore, we affirm and adopt the July 12, 2021 decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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CHRISTOPHER L. PALMER, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

After my *de novo* review of the record in this claim, I dissent from the majority opinion, finding that Claimant has failed to meet her

burden of proving by a preponderance of the evidence that she suffered a compensable injury to her low back on December 2, 2020.

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. §11-9-102(4)(A)(i) (Repl. 2012), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(4)(D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The evidence preponderates that the claimant's low back injury satisfies the requirements of compensability. The claimant sustained an injury while performing employment services on December 2, 2020. There were objective findings of the injury in the form of muscle spasms and disc bulges at the L4-5 and L5-S1 levels as shown on an MRI taken on December 11, 2020. In addition, this injury required medical treatment in the form prescription medications.

The prevailing issue in this matter is whether the claimant's injury was caused by her workplace incident. It is undisputed that the claimant suffered from back pain prior to her workplace accident. However, a pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. See, *Nashville Livestock Commission v. Cox*, 302 Ark. 69, 787 S.W.2d 664 (1990); *Conway Convalescent Center v. Murphree*, 266 Ark. 985, 585 S.W.2d 462 (Ark. App. 1979); *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996). The employer takes the employee as he finds her. *Murphree, supra*. In such cases, the test is not whether the injury causes the condition, but rather the test is whether the injury aggravates, accelerates, or combines with the condition.

The objective findings of the claimant's back condition changed after the workplace accident. Lumbar spine x-rays taken on October 1, 2020 revealed the following:

Lumbar X-ray Impression: There is a 19.3 degree left convexity mid lumbar scoliosis couple with pelvic unleveling. There is mild loss of disc height at L4-5 and L5-S1 with moderate degenerative changes present in the posterior elements. This [sic] is limited ROM with flexion/extension indicating muscle spasm.

Lumbar spine x-rays taken on December 2, 2020 showed:

Findings:

There is a grade 1 retrolisthesis of L5 on S1.

There is multilevel mild to moderate degenerative disc disease with disc space narrowing and mild marginal osteophyte formation present. There is S1 spinal bifida occulta. No fracture identified. No lytic lesion.

Impression:

1. Grade 1 retrolisthesis of L5 on S1.
2. Multilevel degenerative disc disease.
3. No acute bony abnormality identified.

Prior to the work accident, the claimant had not undergone an MRI. However, the claimant's symptoms were such that a lumbar spine MRI was ordered and performed on December 11, 2020. The following findings were revealed:

**FINDINGS:** Axial and sagittal noncontrast images of the lumbar spine were obtained.

There is mild grade 1 retrolisthesis of L5 on S1. There is mild degenerative disc disease at L5-S1.

The remainder of the vertebral bodies are normal in height, alignment, and bone marrow signal intensity. Spinal cord signal intensity is normal.

L4-5: Diffuse disc bulge and moderate to severe facet joint hypertrophy causing moderate spinal canal stenosis and moderate right sided neural foraminal stenosis.

L5-S1: Diffuse disc bulge with superimposed left posterior paracentral disc herniation/disc extrusion. The herniated disc narrows the left spinal canal at this level and abuts/displaces the descending left S1 nerve root posteriorly. Mild to moderate left sided neural foraminal stenosis at this level as well. Moderate facet joint hypertrophy.

The remainder of the disc levels are unremarkable.

The claimant was not assessed as having disc bulges at the L4-5 and L5-S1 levels until after her work accident.

Also, prior to the claimant's work accident, there were no radiological findings that warranted surgical intervention for her lumbar spine condition. However, two weeks following the claimant's work accident, on December 16, 2020, Dr. Patrick Fox assessed the claimant as having a herniated lumbar intervertebral disc and referred her to Dr. John Pace, a neurosurgeon.

In addition to the objective findings showing a change in the claimant's condition, there are subjective facts that support a finding that the claimant's low back condition worsened. Prior to the workplace incident, the claimant was working without limitations or restrictions. Two days after the claimant's work incident, on December 4, 2020, Dr. Ian Cheyne placed the claimant on restricted work duty, with the following restrictions:

Do not drive or operate machinery while taking pain medication. Back: Lifting should be limited to 20 pounds or less. Lifting repetitively should be limited to 10 pounds or less. Limit bending/stooping/twisting. Alternate sit/stand/walk as tolerated.

Dr. Fox removed the claimant from work on December 16, 2020 for 10 days “until reevaluated in clinic”. When the claimant returned to Dr. Fox on December 28, 2020, he placed her back on light duty work “until she follows up with neurosurgery”.

Additionally, prior to the workplace accident, the claimant’s lumbar spine pain was intermittent; however, after this accident, Dr. Fox noted that the nature of the claimant’s pain was constant.

I note that there are four medical opinions offered in this matter. When medical opinions conflict, the Commission may resolve the conflict based on the record as a whole and reach the result consistent with reason, justice and common sense. *Barksdale Lumber v. McAnally*, 262 Ark. 379, 557 S.W.2d 868 (1977). A physician’s special qualifications and whether a physician rendering an opinion ever actually examined the claimant are factors to consider in determining weight and credibility. *Id.*

Dr. Ikemefuna Onyekwelu examined the claimant on January 19, 2021. Dr. Onyekwelu’s records from that visit contained the following assessment and opinion:

**DIAGNOSIS(ES)/ASSESSMENT:**

1. L4 and L5 paresthesia secondary to lateral recess stenosis and foraminal stenosis
2. Right-sided foraminal disc protrusion, L4-5, causing impingement of the exiting L4 nerve root on the right
3. Right-sided synovial cyst formation at L4-5 causing impingement of the traversing L5 nerve root on the right
4. Work-related injury

**DISCUSSION:**

49-year old female with exacerbation of a pre-existing condition causing right lower extremity pain. She has had some discomfort in the past however she describes this new pain as different from her typical usual pain. It is very likely that the incident related to work on December 2, 2020 likely exacerbated her pre-existing condition. She does have a degenerative process at L4-L5 causing hypertrophic ligamentum flavum and disc degeneration. She does have slight decreased right patella tendon reflex on the right compared to the left. She also describes a classic L4 and L5 radicular pain on the right. She also has evidence of a left L5-S1 disc extrusion with caudal migration which she is minimally symptomatic from. She did see her PCP who prescribed her some analgesic medication and muscle relaxants. She was originally scheduled to have an epidural steroid injection however she wanted a second opinion. **There is greater than 50% likelihood that her problem today as [sic] a result of an exacerbation of a pre-existing degenerative condition.** In terms of the acute component of this problem, only a preinjury MRI could definitively qualify the findings as acute versus chronic. (Emphasis added)



Dr. Fox also offered an opinion, to wit:

Ms. Bobbie Griff[i]n<sup>1</sup> is a patient of mine since 07/09/2019 initially seen for Cervical spinal pain, which responded to conservative management. I again saw her on 12/16/2021 subsequent to acute back pain after lifting a patient at work. She was seen in the ER 12/02/2021 and diagnosed with acute back pain/sciatica. Pain was severe limiting function and subsequent MRI showed disc herniation L5-S1 with possible nerve impingement. Having followed Ms. Griffin for over a year there was never any complaint of lumbar pain and I believe that this was an acute event which occurred at work. Treatment options include PT, spinal injections or possible surgery, all are within the scope of normal treatment options.

Drs. J. Michael Calhoun and Steven R. Nokes also offered opinions in this matter. Dr. Calhoun performed a medical record review and formed the following opinion:

All the findings on the lumbar MRI from December, 2020 are pre-existing and degenerative. There is no evidence of an acute symptomatic injury. Ms. Griffin clearly reported lower back pain with bilateral lower extremity radicular complaints to Dr. Richardson, beginning in September, 2020. Thus, any continued issues with her lower back are due to pre-existing chronic conditions and not related to her reported injury on December 2, 2020. She is at MMI with no partial permanent impairment.

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<sup>1</sup> The claimant's last name was Griffin when she initially began treating with Dr. Fox.

There are no work restrictions with regard to her work injury in December 2020.

Dr. Nokes also reviewed the claimant's records and imaging.

Dr. Nokes opined, "more likely than not and to a reasonable degree of medical certainty, the imaging demonstrates moderate to severe multilevel lumbar degenerative findings with multiple chronic pain generators but no acute finding which could be related to an injury on 12/2/2020, except for muscle spasm."

Neither Dr. Calhoun nor Dr. Nokes examined the claimant, and offer their opinions based solely on reviewing medical records. Therefore, I assess greater weight to the opinions of Dr. Fox, who was the claimant's treating physician, and Dr. Onyekwelu, who reviewed the claimant's medical records and examined her.

Based on the aforementioned, I find that the claimant has established by a preponderance of the evidence that she sustained a compensable low back injury.

For the foregoing reason, I dissent from the majority opinion.

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M. Scott Willhite, Commissioner