

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: G904721

JONATHAN C. PIKE, EMPLOYEE	CLAIMANT
CLARENDON ELEMENTARY SCHOOL, EMPLOYER	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSOCIATION-WTC, THIRD PARTY ADMINSTRATOR	RESPONDENT

OPINION FILED FEBRUARY 24, 2020

A hearing was held in the above-styled claim on October 29, 2020, before Former Chief Administrative Law Judge Barbara Webb, in Jonesboro, Arkansas. However, it was submitted for a ruling before Administrative Law Judge Chandra L. Black, in Pulaski County, Little Rock, Arkansas.

The Claimant/Mr. Jonathan C. Pike appeared *pro se*. Mr. Pike resides in Clarendon, Arkansas.

The Respondents were represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The claim has been submitted on the record in Pulaski County, Arkansas. A Pre-hearing Order was previously entered in this case on October 2, 2020. This Pre-hearing Order set forth the stipulations offered by the parties, the issues to be litigated, and their respective contentions.

The following stipulations were submitted by the parties, either pursuant to the Pre-hearing Order, or at the start of the hearing. I hereby accept the following stipulations as fact:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

Pike- G904721

2. The employee-employer-insurance carrier relationship existed on September 18, and September 23, 2017; and at any other relevant time.
3. The Claimant's average weekly wage at the time of his alleged back injury was \$344.06. His weekly compensation rates are \$229.00 and \$172.00.

By agreement of the parties, the following issues were litigated at the hearing:

1. Whether the Claimant sustained a compensable injury to his back during and in the course of his employment with the respondent-employer/Clarendon Elementary School of September 23, 2017.
2. Whether the Claimant is entitled to medical treatment for his alleged back injury.
3. Whether the Claimant is entitled to temporary total disability and permanent partial disability compensation for his alleged back injury of September 23, 2017.

Contentions

Claimant: The Claimant contends he injured his back while lifting heavy boxes of copy paper on September 23, 2017, at work. The Claimant is seeking reasonably necessary medical treatment, temporary total disability, and permanent partial disability compensation for his alleged back injury.

Although the Claimant asserted his entitlement to a payout on his contract when he changed over to part-time work; the Commission put him on notice that this alleged loss of pay is not a remedy available to him under the Arkansas Workers' Compensation Act (referred to hereinafter as "the Act"), and it must be addressed in a different court.

Respondents: The Respondents contend that the Claimant did not sustain a compensable low injury on 9/18/17 or at any other time while working for

Pike- G904721

Respondent/Employer. Claimant's problems, if any, are the result of a pre-existing condition.

The documentary evidence submitted in this case consists of the hearing transcript of the October 29, 2020, and the documents contained therein.

The following witnesses testified at the hearing: Mr. Jonathan Cemore Pike (the "Claimant"), Ms. Candida Finney, and Ms. Lisa Prince.

Hearing Testimony

At the time of the hearing, the Claimant testified in his own behalf. The Claimant, age 53, is a high school graduate. He worked for the Clarendon School District for five years as a janitor. Prior to that, the Claimant worked at Marty Mart, in Clarendon, and the at the Post Office. The Claimant attended Crowley's Technical Institute, in Forrest City, and received certification in carpentry-type work. He moved to Texas and started working for North Texas State University. Also, while living in Texas, the Claimant worked for Flower Mound, a spot-welding company. Following this job, the Claimant returned to Arkansas.

It appears that the Claimant began working for the Post Office and Marty Mart at the same time in 2015. The Claimant performed janitorial-type work for the Post Office. He has other prior janitorial work experience, including with Power Systems, in Clarendon. There, the Claimant's employment responsibilities included cleaning up the different yards, and duties as a ground's keeper. He has previously worked as a machine operator at Baird Manufacturing Company, making cake baskets. The Claimant has also worked

Pike- G904721

as a cook in various restaurants and nursing homes.

The Claimant began working for Clarendon Elementary School/the respondent-employer in June of 2015. His job title was janitor/custodian for the whole school district. This was a full-time position. The Claimant's employment with Clarendon Elementary School ended on May 28, 2020, after he voluntarily resigned.

While working for the school district, the Claimant worked a 40-hour work week. He mopped, swept the floors, and took out the trash. The Claimant performed other work, such as washing and cleaning cars on a regular basis.

The Claimant maintained that he hurt his back at work on September 23, 2017. Specifically, the Claimant gave the following explanation of his alleged back injury:

A I was – I came to work and went -- they told me they needed some copying paper. So I had to go over to the high school and get it. I got eight boxes of copying paper, and I was lifting the boxes of paper onto the truck and I hurt my back.

Q What part of your back?

A My lower back.

The Claimant testified that he felt a pop in his back, but he continued working after he heard the pop. He further testified that he moved the boxes over to the elementary school. According to the Claimant, he told Ms. Lane he had hurt his back lifting boxes. The Claimant admitted that Ms. Lane was not his supervisor. Instead, the Claimant testified that Ms. Lane is the secretary at the elementary school.

He was asked if he reported the alleged injury to his supervisor, the Claimant answered: "I reported it to her, because she was -- I was working for the elementary school

Pike- G904721

and the supervisor was Stanley Powell.”

The Claimant maintained that he believed Ms. Lane would report the injury to Mr. Stanley. He testified that after he reported his injury to Ms. Lane, he continued to do full-duty work that day. The Claimant reported to work the following day. According to the Claimant, he tried to get medical attention for his back, but the Respondents would not send him to a doctor. However, the Claimant admitted that he did not asked Ms. Lane to send him to see a doctor.

Upon further questioning, the Claimant testified that he asked Ms. Prince to send him to the doctor. The Claimant essentially testified that Ms. Prince is over workers’ compensation claims for the school district. He confirmed that he filled out an injury report. According to the Claimant, Ms. Prince would not allow him to go to the doctor because his claim was denied in November. The Claimant testified that this alleged injury occurred on September 17, 2017.

After his claim was denied, the Claimant confirmed that he sought medical treatment on his own from his primary care doctor, Dr. (Dennis) Yelvington. The Claimant admitted that he has been on disability since 2008. The Claimant confirmed that the basis of his disability was for a lower back injury. According to the Claimant, he had back surgery and the screw “messed up.” The Claimant agreed that despite his back condition/disability, he was able to perform his job duties with the school district.

Regarding his medical care for his alleged back injury of 2017, the Claimant admitted to seeking medical treatment from Mid-Delta Clinic. The Claimant confirmed

Pike- G904721

that they did x-rays, and an MRI of his back. The Claimant testified that he treated with Dr. Schlesinger (Dr. Schalchlin). He testified that Dr.(sic) Ashley Loftis ordered the MRI. (Of note, the records demonstrates that Ms. Loftis is a PA). According to the Claimant, Dr.(sic) Loftis is a physician at the Mid-Delta Clinic. Per the Claimant's testimony, Dr. (sic) Loftis referred him to Dr. Gunter Cain. The Claimant confirmed that while treating with these doctors, he continued to work. However, the Claimant essentially testified that he had to reduce his hours to part-time work.

Specifically, the Claimant testified:

Q Okay. Explain how that took place?

A Well, I went to Lisa and Mr. Vent and told them that I needed to go on -- They tried putting me on a -- I was getting put off. The doctor was trying to get me on light-duty work and stuff like that.

Q Okay.

A Dr. Cain was.

Q What type of restrictions; do you know?

A No lifting over ten pounds.

Upon further questioning, the Claimant testified that when he went to part-time, he worked fewer hours but performed the same work. According to the Claimant, he had to clean 13 classrooms. Specifically, he mopped and swept the floors, and cleaned the bathrooms, and hallways. The Claimant testified that he worked only four or five hours per day, five days a week.

He explained that his alleged back injury of 2017 affected his love life, and his life

Pike- G904721

around town. The Claimant essentially testified because of his back injury; he was unable to finish his work like he used to do. According to the Claimant, now he stays home in the bed all the time.

The Claimant admitted to undergoing surgery to his back in 2005. However, he denied that surgery has been performed on his back due to his alleged injury of September 2017. The Claimant testified that Dr. Cain has recommended surgery for his alleged back injury. According to the Claimant, he has not had the surgery because he does not have the means to pay for it. He confirmed that he has been treating his symptoms with over-the-counter Tylenol. The Claimant essentially testified that he takes three Tylenols a day for his back. However, the Claimant denied any physical limitations.

The Claimant testified that he underwent 15 to 16 physical therapy visits for his alleged back injury of September 2017. He essentially agreed that the physical therapy helped to relieve some of his symptoms. According to the Claimant, he continues to do home exercises. The Claimant maintained that he resigned his position with the school district because of his back issue.

However, next the Claimant testified:

A And they was working me outside during the Corona season and everybody else was working inside. So I decided to resign.

Q So you resigned. Have you tried to find other employment within your restrictions?

A No, ma'am.

The Claimant was questioned about a medical report from Dr. Cain dated

Pike- G904721

September 11, 2018, wherein he recommended that the Claimant be placed on light-duty.

However, the Claimant denied that the school district put him on light duty.

Regarding his 2005 back injury, the Claimant explained:

A I was working for Flower Mound, Texas, and I was lifting a trash can full of metal with a two-wheeler.

Q Okay. And that's when you had your first low-back injury, then you had to have surgery, right?

A Yes, ma'am.

Q Was it the same as the second injury or was it different?

A I think, it's worser than the first, because of the hardware that broke off in my back.

Q So which one' worse; the first injury or the second injury?

A The second injury.

Q The one at the school?

A Yes, ma'am.

On cross examination, the Claimant admitted to having testified that he has been on Social Security Disability since 2007 or 2008. He admitted to having testified during his deposition that his back injury occurred while working at Pence, Inc., in Wichita. This injury happened in 2005.

At the time of his 2005 injury, the Claimant testified that he was lifting kegs of beer with a two-wheeler when he hurt his back. He testified that this injury led to his back surgery. The Claimant further testified that he knew he was injured right away when this injury occurred. He verified that he reported the injury to his supervisor. The Claimant

Pike- G904721

testified that Dr. Robert Eyster performed his surgery. He was off work for about two years with his back surgery.

Under further questioning, the Claimant admitted he had a prior injury in 1989. The Claimant was working in Flower Mound, Texas, at the time of this injury. He essentially testified that this injury occurred while lifting a barrel of lead. The Claimant testified that following his first injury, he received medical treatment in the form of medications and physical therapy. It appears that the Claimant underwent an MRI, which showed a ruptured disk. Ultimately, the Claimant underwent back surgery. The Claimant testified that he was off work for about a year following this surgery.

He confirmed that following this 1989 injury, he had some restrictions that kept him from going back to his old job. The Claimant agreed that he settled this claim for \$35,000.00.

The Claimant had another work-related injury in 1991 or so. At that time, the Claimant was working at Central Kansas Trust. This injury occurred while working on a roof. The Claimant testified that he was lifting some trusses and hurt his back. He was off work for about a year following that injury.

His next injury occurred in the late '90s, while working at a restaurant named Samuel's. According to the Claimant, this injury happened while lifting trash and grease up to a dumpster. He was also off work for about a year after this injury.

The Claimant confirmed that he testified during his deposition that he has had 11 or 12 workers' compensation injuries, and all of them were to this lower back. He agreed

Pike- G904721

that most of his injuries occurred at fast-food restaurants. The Claimant further agreed that for most of these injuries, if not all of them, he had to take off work and seek medical treatment. It appears that all of the Claimant's prior back injuries happened in Kansas.

Regarding the Claimant's alleged injury with Clarendon, the Claimant verified that his alleged injury happened on September 23, 2017. He agreed that his alleged injury occurred while lifting boxes of copy paper. The Claimant maintained that he did fill out paperwork because they were denying the claim. He verified that he reported his alleged incident to Ms. Lane, and then to Ms. Prince.

According to the Claimant, he went to see Dr. Yelvington about two or three months after his alleged injury happened, because they approved for him to go to the doctor. He maintained that he told the doctor about the incident of lifting boxes of copy paper, which happened on September 23, 2017.

As of the date of the hearing, the Claimant continued to draw Social Security Disability benefits. The Claimant confirmed that during his deposition, he testified that Dr. Cain performed surgery for removal of the broken screw. However, the Claimant was unable to recall having testified that he did not know when the screw broke. The Claimant maintained that the screw broke while he was working at the school, at which point he came under the care of Dr. Yelvington.

Specifically, the Claimant testified:

Q Can you tell us with more certainty what timeframe you're talking about?

A Like May of – April or May of 2017.

Pike- G904721

Q That's when you think it broke?

A Yes, ma'am.

Q Do you know how it happened?

A While I was working at the school district doing a lot of work? (sic)

The Claimant admitted to having testified during this deposition that he has had problems with radiation into his legs since the surgery in 2005. He testified that he washed cars for people at the Clarendon School District, on school-time. He denied having a business on the side. According to the Claimant, Mendy Car Wash was her business. However, the Claimant did not specify the owner's full name. The Claimant testified that he just washed cars there. The Claimant admitted that he made \$20.00 to \$40.00 (in cash), per car. He denied the school paid him for washing cars. The Claimant essentially confirmed that he washed various people's cars, from whom he received pay.

He admitted that following his alleged injury, he was still able to do one or two vehicles per week. According to the Claimant, he also worked at a place called Supreme Wingz, during the summer of 2019.

Under further questioning, the Claimant testified:

Q You worked from 10:00 a.m. to 6:00 p.m. five days a week?

A Volunteering.

Q I'm asking about the hours you worked there?

A It wasn't that long.

Q Is that not what you told me in your deposition?

Pike- G904721

A It wasn't that. I was, like going in there, helping them out trying to get them to where they'd get the restaurant going.

Q This was for a friend of yours?

A Yes, ma'am.

Q I asked you, "What were your hours there?" You said, "From ten o'clock to six o'clock." Then, I asked, "How many days a week?" "Five days a week." Was that not your response?

A Might have been at that time.

Q Okay. And you also said that you made 2 or \$300.00 working there, is that not correct?

A Yes, for one -- for the time I was there, that's all I received.

Q So it wasn't really volunteering work, you were paid for that, correct?

A Not a -- under the table. They wasn't paying me, like on no check stub or nothing.

Q They paid you cash?

A Yes, ma'am.

Counsel for the Respondents asked the Claimant if he recalled undergoing a CT scan on May 30, 2006, which revealed he had a fractured screw; and he replied, "No."

Thereafter, the following exchange took place:

Q If it's in the medical records, do you dispute it for any reason?

A From what job, when the screw was broken?

Q I can't say that. I'm saying the CT scan was done on May 30th, 2006.

A No ma'am I don't know. To recommend -- I don't know. Recommend, no. I don't remember seeing no -- I seen it broke off. I mean, it was a broke disk in my back is when it broke off. It wasn't fractured or nothing.

Pike- G904721

Ultimately, the Claimant admitted that his back was fractured then, and that Ashley Loftis referred him to physicians at Mid-Delta. He further admitted that the medical record dated November 7, 2016, which stated that he had chronic back pain for 11 years is correct. The Claimant did not recall telling Loftis that he had a broken off screw in his back. However, the Claimant did recall telling her that he had pain since the surgery in 2005. He confirmed that he told Ashley Loftis that he was depressed with his chronic pain and the events from the past.

Next, the Claimant was asked about a medical record from Dr. Yelvington dated August 30, 2017, wherein the Claimant reported that his back pain was a level 8 out 10, with 10 being the worst pain imaginable. The Claimant denied that he told Dr. Yelvington his pain was at a level 8.

Regarding a record from Dr. Patel dated August 15, 2018, he admitted that this record is correct. Per this document, the Claimant reported to Dr. Patel that he had problems with back issues since 2005. The Claimant agreed that he did not mention an injury at that time.

The Claimant was shown a Form AR- N, which was filled out on September 23, 2017. He confirmed that his signature is on this document. The Claimant was asked if he filled this document out, he replied: "I might have filled the document out, but I didn't write that 9/25. I did write the dates." According to the Claimant, he did not complete the middle section on the document and does not know who did so. Although the Claimant admitted that the document states that his lower back was injured, he denied

Pike- G904721

having given an injury date of September 18th. He maintained that they (the Respondents) must have put that date on the document.

Although the document states that the Claimant gave the cause of injury as being “workload with no help,” he admitted that this is what he told them, but he did not write it. The Claimant testified that he hurt his back on September 23. He denied that there was a different injury on September 18, 2017. Instead, the Claimant testified that there was a different injury on September 20. The Claimant confirmed that he is asking the Commission to award benefits for an alleged injury on September 23.

Upon examination by the Commission, the Claimant continued to maintain that he injured his back on the September 23 at the high school. He went on to explain that on the 20th of 2017, they locked the school down and searched his car for drugs. The Claimant agreed that this happened three days before he got hurt. He testified that this was prompted by Ms. Turner, who reported him after she walked past his car and smelled weed. The Claimant denied that they found any drugs in his car. According to the Claimant, after this Ms. Hamilton told him he could not wash cars on the job anymore. This occurred on September 23, 2017.

The Claimant maintained that on that Monday, when he came back to work, they asked him to go and get the copy paper, which was on the 23rd. He further maintained that during this event, he hurt his back.

Candida Finney testified on behalf of the Claimant. Ms. Finney verified that the Claimant moved in with her because he was no longer able to pay his bills. As a result,

Pike- G904721

he rented a room from Ms. Finney. She agreed that the Claimant complained about his back injury and attributed it to working at the school.

Ms. Finney essentially agreed that the Claimant is a diligent worker. She also agreed that the Claimant borrowed her car in December 2019, to go the Baptist Pain Center. Ms. Finney further confirmed that she allowed the Claimant to use her car to go to physical therapy. She confirmed that the Claimant worked part-time at the school performing full-time duties.

Upon being questioned by the Commission, Ms. Finney verified that she continues to work at the high school, as a janitor, as of the date of the hearing. Although both Ms. Finney and the Claimant worked for the school district from 2015 through 2020, they worked on separate campuses. She admitted that she was not in a position to observe what the Claimant could and could not do physically, because she was on a different campus. However, Ms. Finney explained that they did work together some in the summer. She was unable to recall what year this occurred. However, Ms. Finney admitted that this occurred after the Claimant's alleged injury. According to Ms. Finney, the Claimant was unable to do the work, but he complained about his back hurting. She verified that the Claimant told her, he hurt his back lifting paper.

Lisa Prince was called as a witness on behalf of the Respondents. She is the General Business Manager for the entire Clarendon School District. Her employment duties entail that of HR person, workers' compensation representative, the FMLA representative, and the overall business of the school district.

Pike- G904721

She verified that the Claimant told her he had a work injury. Ms. Prince admitted that she followed the process after the Claimant told her about his alleged injury. According to Ms. Prince, she received a call from Ms. Lane informing her that the Claimant had been injured. She instructed Ms. Lane to send the Claimant over to pick up a Form AR-N. After Ms. Prince received the Form N from the Claimant, she sent it over to Misty Thompson, at the Arkansas School Board Association. Ms. Prince testified that the Claimant told her that he injured his back lifting boxes.

Ms. Prince was given a copy of Respondents' Exhibit No. 2, which is the Form AR-N. She denied having filled out any portion of the form. Ms. Prince testified that she gave the form to the Claimant for him to fill out and return to her. She testified that Ms. Thompson works for the School Board Association and is their workers' compensation representative. According to Ms. Prince, upon getting the documentation to Ms. Thompson, the claim was out of her hands. She confirmed that she did not have anything to do with his claim being denied.

Under further questioning, Ms. Prince admitted that the Claimant resigned from his position at the school district in July 2020. She denied that the Claimant gave her a reason for resigning his job.

Ms. Prince admitted on cross examination, that the Claimant washed cars. She denied having anything to do with his Social Security benefits being cut off. She also essentially denied going to the School Board Members to report that he was washing cars on school time. Ms. Prince denied that she reported an injury date of September 18 on the

Pike- G904721

form. Instead, Ms. Prince testified that the Claimant put the date on the report (the Form AR-N).

On redirect examination, Ms. Prince verified the Claimant's letter of resignation, wherein he stated: "I Jonathan Pike resign as of July 20, 2020." (Respondents' Exhibit No. 3) Ms. Prince admitted that her signature is at the top of the document and the Claimant's signature is also on the document. She explained that once a resignation is received, protocol requires that it be approved by the Superintendent. Ms. Prince confirmed that she had never seen the document that the Claimant presented at the hearing.

Ms. Prince confirmed that Mr. Prince, (her ex-husband) was one of the Claimant's supervisors in 2019. She agreed that Mr. Prince could have provided the light duty that was afforded the Claimant.

Documentary Medical Records

The first medical record is dated May 16, 2006. It demonstrates that the Claimant sought medical treatment in the form of an MRI of the lumbar spine. Dr. James Degener rendered the following impression: "Changes previous surgery the lower lumbar spine. There is central disc protrusion at L3-L4 with degenerative facet changes resulting in narrowing of the thecal sac at this level."

On October 14, 2010, the Claimant was evaluated by Dr. Donna Marie Koroma due to back problems. Specifically, the Claimant gave a history of present illness, which included back surgery that had resulted in a broken screw and pain in his back and leg. Dr. Koroma wrote, in relevant part: "Low back pain: acute worsening of chronic condition,

Pike- G904721

lumbar radiating down legs to ankle reports hx of back surgery for ruptured disc in 2005, saw Yelvington MD prior. Reports re-injuring[sic] back in 2007-may have broken a pin.” At that time, Dr. Koroma assessed the Claimant with: “Low back pain- 724. 2 (Primary). Myofascitis – 729.1,” for which she prescribed a medication regimen.

The Claimant sought medical treatment from Baptist Health Family Clinic on June 19, 2013. It appears that the Claimant presented with back pain. The Claimant reported symptoms, which included a history of lumbar surgery. He complained of a broken screw and pain in his back and leg. Dr. Seth Kleinbeck assessed the Claimant with “acute low back pain,” for which he ordered a high dose of Prednisone Dose Pack.

Further review of the medical records demonstrate that the Claimant returned to Baptist Health Family Clinic on August 5, 2013 due to continued complaints of low back pain. The Claimant reported pain that radiated into the left foot and left thigh. X-rays were performed that same date which revealed, “Spinal fusion hardware in place in his lower lumbar spine. Inferior screw on the right side does appear to have the distal tip broken off. Otherwise it appears to be in place. There is some degenerative scoliosis as well.” Dr. Kleinbeck resumed the Claimant’s medication regimen.

On June 11, 2014, the Claimant presented to Baptist Health Family Clinic, for his ongoing chronic back pain. The Claimant reported to Dr. Dennis Yelvington that the problem started nine years ago. However, the Claimant indicated that his back problem was worsening and occurring more persistently. The location of the Claimant’s pain was in his lower back. His symptoms were aggravated by extension, flexion, and lying/rest.

Pike- G904721

This medical demonstrates that the Claimant had back surgery out of state in 2009. Dr. Yelvington assessed the Claimant with “1. Back pain. 2. DDD (degenerative disc disease (722.6). 3. DJD (degenerative joint disease).” Dr. Yelvington recommended that the Claimant use moist heat and continued him on a medication regimen.

The Claimant continued to seek medical care from Baptist Health Family Clinic due to ongoing chronic low back and related symptoms, under the care of Dr. Yelvington. It appears that the Claimant continued to complain of similar ongoing chronic low back pain and related symptoms, in March and May of 2015.

On November 12, 2015, the Claimant returned to Baptist Health Family Clinic due to back pain. The Claimant reported an onset of symptoms five months ago. The problem was worsening, and it occurred persistently. Location of the Claimant’s pain was in his lower back. The pain radiated to the left calf, left foot, right foot, left thigh, right thigh, and bilateral legs. The Claimant also described his pain as being discomforting, numbness sharp, and tingling. He further described aggravating factors, which included but was not limited to bending, daily activities, running, walking, twisting, standing, extension, and flexion. The Claimant was evaluated by Nancy A. Hornsby, APRN. She referred the Claimant to Arkansas Orthopedics.

A medical note authored by Ashley Loftis, PA, on November 8, 2016. The Claimant sought medical treatment for his back issues. X-rays revealed previous back surgery and a broken screw. Loftis assessed the Claimant with “Back chronic back pain and radiculopathy,” for which she prescribed medications. She also opined that the

Pike- G904721

Claimant needed a referral to a back surgeon.

On August 30, 2017, the Claimant sought medical treatment from Dr. Dennis Yelvington due to his chronic back issues. The Claimant reported that he had been working moving task and sprained his back. He reported to Dr. Yelvington that this was a recurrent problem. The Claimant gave a history current episode started more than a month ago. He reported that this problem had been gradually worsening since the onset. His current pain was in his lumbar spine. The pain was at a severity of 8/10. According to this report, the Claimant's pain was described as aching in quality, radiated to his foot, and was the same all the time.

The Claimant was seen by Dr. Yelvington on September 25, 2017 due to continued back problems. At that time, the Claimant reported that he was trying to work at the school moving tables and chairs doing some activity and injured his back.

It appears that the Claimant sought treatment on August 23, 2018 from Mid-Delta Health System, under the care of Dr. Andy Schalchlin. He assessed the Claimant with "with back pain with right-sided radiculopathy. At that time, underwent x-rays. The Claimant was noted to have a history of "back pain." History of fusion in 2005. L-Spine AP was performed of the Claimant's lumbar spine. Dr. Samuel Edwards rendered the following IMPRESSION: "1. Surgical change of posterior fusion spanning L4-S1 with fracture of the right transpedicular pedicle screw of S1. 2. Multilevel degenerative disease."

On September 11, 2018, Dr. Andrew Cain authored the following letter:

Pike- G904721

To Whom it May Concern:

Jonathan Pike was seen in my clinic on 9/11/2018 at 9:30 am. I recommend that Jonathan be placed on light duty or relieved of work duties until his pain improves.

If you have any questions or concerns, please don't hesitate to call.

On May 29, 2019, the Claimant underwent L-SPINE AP, due to back pain. Dr. John P. Scurlock rendered the following impression: "1. Remote L4/S1 posterior fusion. 2. Stable fracture of the right S1 pedicle screw. 3. Moderate degenerative disc height loss noted at L4/5."

The Claimant sought medical treatment from Mid-Delta Health System on October 9, 2019 due to sharp pain in his back and down his leg. On physical examination of the Claimant's back, Dr. Schalchlin noted tenderness, lumbar tenderness on the right, and straight leg raising test: positive on the right, approx. 45 degrees. Dr. Schalchlin assessed the Claimant with "back pain with right sided radiculopathy," for which he continued his medication regimen.

On January 7, 2020, the Claimant underwent an MRI of the lumbar spine with an impression of: "Surgical and degenerative findings as detailed above. Of note, there is active disc degeneration at L3-4 and severe acquired spinal canal narrowing at L2-3 and 4."

ADJUDICATION

The Claimant has asserted a compensable back injury as a result of lifting boxes of copy paper while working for Clarendon Elementary School, on September 23, 2017.

Pike- G904721

However, the Respondents contend that the Claimant did not sustain a compensable low back injury on September 18, 2017 or at any time while working for the respondent/employer. Respondents further contend that Claimant's problems if any are the result of a pre-existing condition.

It is well-settled that under Arkansas workers' compensation law that an employer takes the employee as he finds him, and employment circumstances that aggravate preexisting conditions are compensable. Hickman v. Kellogg, Brown & Root, 372 Ark. 501, 277 S.W.3d 591 (2008). 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 workers' compensation is sought. Id. An aggravation is a new injury resulting from an independent incident, and being a new injury with an independent cause, it must meet the definition of a compensable injury in order to establish compensability for the aggravation. Id. at 511-12.277 S.W. 3d at 600.

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[.]

The Claimant must prove by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. § 11-9-102(4) (E)(i). Preponderance of the

Pike- G904721

evidence means the evidence having greater weight or convincing force. Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 206 S.W. 2d 442 (1947).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the Claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable back injury on September 23, 2017, while lifting boxes of copy paper, in the course and scope of his employment with the respondent-employer/Clarendon Elementary District.

Here, the Claimant had worked as a janitor for Clarendon Elementary School since June of 2015. His job duties entailed the cleaning and upkeep of 13 classroom. The Claimant's testimony demonstrates that he had to sweep and mop the floors/hallways and keep up the grounds. The Claimant has had multiple significant back injuries; majority of these injuries resulted from his work in the fast-food restaurant industry.

Specifically, the evidence demonstrates that the Claimant has had 11 to 12 workers' compensation claims relating to his low back, beginning in 1989. These were very severe injuries to the Claimant's back, which resulted in him being off work for over a year on more than one occasion. In fact, the Claimant underwent surgery to his back in the form of fusion surgery due to a ruptured disc in 2005; and he has had a broken/fractured pedicle screw in his back since 2006. The evidence shows that the Claimant has had ongoing chronic back pain and pain radiating into his legs since 2005. He has been on Social Security Disability since 2008 due to his back condition. His testimony demonstrates that

Pike- G904721

the school district was aware of his back condition and physical limitations when he went to work for them.

Nevertheless, it is well established in workers' compensation law that the employer takes the Claimant as he finds him and that the Claimant may suffer an aggravation of a preexisting condition, thereby suffering a new injury. However, I am not persuaded that this is the case in the claim at bar.

In that regard, the Claimant gave inconsistent, confusing, vague, and baffling testimony concerning his alleged back injury of September 23, 2017. As such, I found the Claimant's account of when and how his alleged back injury occurred not to be credible.

Specifically, the Claimant's alleges that he injured his back on September 23, 2017; the Claimant testified on direct examination that his injury occurred while lifting boxes of copy paper at the high school. However, on the Form AR-N, the Claimant reported that his injury occurred on September 18, 2017, and that his injury was caused by "workload with no help." Paradoxically, the Claimant denied during the hearing that an injury to his back occurred on September 18. Instead, the Claimant maintained that there was a different injury to his back on September 20, 2017 (but he did not provide an explanation of the alleged event). However, upon being questioned by the Commission, the Claimant testified that on, Friday, September 20, the school was placed on lockdown and his car was searched for drugs. He went on to explain that the following Monday, he returned to work and injured his back while lifting boxes of copy paper. Of note, September 23, 2017, was on a Saturday. A day that the Claimant would not have been at work. The Claimant also

Pike- G904721

testified that he injured his back on September 17, 2017 but he did not supply any specifics regarding how the alleged event occurred.

The Claimant vehemently denied having filled out the middle section of the Form AR-N, relating to the date and brief cause of his alleged injury. However, Ms. Prince credibly denied that management did not complete the Form-N. After having reviewed the consistent penmanship of this document, and considering Ms. Prince's credible testimony, and all of the Claimant's baffling and confusing testimony in this regard and other aspects of his testimony, I am persuaded that Claimant filled out this document.

The Claimant has had several workers' compensation claims; he was aware that he should report his injury to his supervisor. However, instead of reporting his injury to his supervisor (Mr. Stanley), he reported it to Ms. Lane, the secretary at the school.

Ultimately, the Claimant sought medical treatment for his back condition under the care of his treating physician, Dr. Yelvington, and at Mid-Delta Health System. However, the Claimant even gave inconsistent statements to Dr. Yelvington regarding his alleged back injury of September 23, 2017. Specifically, on August 17, 2017, the Claimant reported to Dr. Yelvington that he injured his back during a moving task. He also reported that his symptoms had started a month ago (July 17, 2017). However, when the Claimant saw Dr. Yelvington on September 25, 2017, just two days after his alleged back injury, the Claimant reported that he injured his back at school moving tables and chairs. There is absolutely no mention of any incident of moving copy paper.

Pike- G904721

The Claimant gave baffling and inconsistent testimony in just about all aspects of his testimony throughout the hearing. Specifically, the Claimant testified on direct examination that his first low back injury of 2005, occurred in Flower Mound, Texas, while lifting a trash can full of metal with a two-wheeler. On cross-examination, the Claimant admitted that he testified during his deposition that his first injury occurred in Kansas. He later testified that his first back injury occurred in 1989.

The Claimant also gave inconsistent testimony relating to his work activities with a local restaurant after his alleged incident. He initially testified that his activities were performed on a volunteer basis. The Claimant later admitted that he was paid for his services.

I recognize that the Claimant is not required to give the precise date of an incident. However, here the Claimant gave different dates for his alleged back injury that are not part of this claim, and other mechanisms of injuries to Dr. Yelvington. Therefore, in light of all this, particularly the fact that the Claimant has given inconsistent accounts of how his alleged injury occurred, I am led to conclude that the Claimant did not sustain an injury to his back at any time while performing employment services for the Clarendon School District.

Moreover, the diagnostic tests of record do not demonstrate any evidence of an acute injury. In fact, all of the abnormalities demonstrated on the MRI, CT scan, and X-rays are degenerative in nature and pre-existing, including the fractured screw/broken screw.

Pike- G904721

The Claimant testified that he sustained the broken screw while performing his employment duties in April or May of 2017. At another point in the Claimant's testimony, he alleged that the broken screw happened on September 23, 2017. The medical records clearly demonstrate that the Claimant sustained the broken screw in 2006. He testified on direct that Dr. Cain has recommended surgery. On cross examination, the Claimant admitted that during his deposition testimony, he testified that that Dr. Cain had repaired the broken screw, which clearly has not been done.

It is noteworthy that the Claimant's prior complaint, relating to his pain back and radiating leg pain, beginning in 2006, are identical to the symptoms described by the Claimant following his alleged work incident of September 2017. The evidence clearly shows that the Claimant has suffered chronic back pain since 2005, for which he sought ongoing medical care. As such, one could only speculate that the Claimant sustained a back injury at work. Conjecture and speculation, even if plausible, cannot take the place of proof. Dena Construction Co. v. Hendon, 264 Ark 791, 575 S.W. 2d 155(1970).

As previously noted, I recognize that employment-related aggravation of pre-existing conditions can constitute a compensable injury. However, due to all of the reasons discussed above, I find that the Claimant failed to prove a causal connection between his employment activities with the Clarendon School District, and any of his current physical complaints and/or difficulties to his back. Instead, the evidence clearly demonstrates that the Claimant current symptoms and difficulties are merely the result of the natural progression of the Claimant's significant pre-existing degenerative disc disease,

Pike- G904721

failed back surgery, and double digits (11) prior injuries involving his lower lumbar spine, dating back over two decades ago. As such, I find that the Claimant failed to establish that he sustained an aggravation/new injury of his pre-existing low back condition arising out of and in the course of his employment with Clarendon Elementary School, on September 23, 2017, or any other time.

Notwithstanding all of the foregoing, the Claimant gave conflicting testimony concerning the reason for his resignation from the district. His letter of resignation does not specify a reason. He initially testified that he resigned because of back problems. However, the Claimant later testified that he resigned because he was made to work outside during COVID-19, while other worked inside.

Therefore, based on all of the foregoing reasons, I find that the Claimant has failed to meet his burden of proving by a preponderance of the evidence all the elements necessary to prove that he sustained a compensable injury to his back, on September 23, 2017, during and in the course of his employment with the respondent-employer.

Because the Claimant failed to prove he sustained a compensable back injury on September 23, 2017, all other issues of temporary total disability and medical benefits have been rendered moot and not discussed in this Opinion. Accordingly, this claim for a back injury is respectfully denied and dismissed in its entirety.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On the basis of the record as a whole, I make the following findings of fact and conclusions of law in accordance with Ark Code Ann. § 11-9-704.

Pike- G904721

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. I hereby accept the aforementioned stipulations as fact.
3. The Claimant failed to prove by a preponderance of the evidence that he sustained an injury to his back at any time in September 2017, during and in the course of his employment with the Respondents/Clarendon Elementary School.
4. All other issues have been rendered moot.

ORDER

The Claimant failed to prove by a preponderance of the evidence that he sustained a low back injury arising out of and in the course of his employment with the Respondents on September 23,2017, or at any other time. Therefore, his claim for compensation is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

Chandra L. Black
Administrative Law Judge

clb/bh