

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. H103797, H103798 & H201158

ROBERT POWERS, CLAIMANT
EMPLOYEE

UNIVERSITY OF ARKANSAS FAYETTEVILLE, RESPONDENT
EMPLOYER

PUBLIC EMPLOYEE CLAIMS DIVISION, RESPONDENT
INSURANCE CARRIER/TPA

OPINION FILED APRIL 4, 2023

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

Claimant represented by the HONORABLE EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE CHARLES H. McLEMORE, JR., Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as modified.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed August 18, 2022. The administrative law judge found that the claimant proved he was entitled to additional medical treatment "for his left knee injury." After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's opinion as modified. The Full Commission finds that the claimant proved he sustained a compensable left knee injury as a natural consequence of his compensable back injury.

I. HISTORY

Robert John Powers, now age 56, testified that he became employed as a Master Plumber for the respondents, University of Arkansas, in 2005. The record indicates that the claimant sustained a work-related back injury on or about August 29, 2019. A medical provider reported on September 6, 2019 that the claimant had sustained a Strain or Tear to his “Lower Back Area (Trunk)” on August 29, 2019. It was noted, “Robert was carrying parts boxes into the basement through the quad. He felt a strain in his lower left back.” An x-ray of the claimant’s lumbar spine was taken on September 3, 2019 with the impression, “1. Mild disc space narrowing at L5-S1. No compression deformity or subluxation identified in the lumbar spine. 2. Mild bilateral acetabular spurring.”

Dr. Mark Miedema reported on November 24, 2020:

Mr. Powers presents for evaluation of 1 year intermittent low back pain. This was a work related lifting injury. He was lifting and carrying heavy boxes on 8/29/19 when he had onset of pain. He works plumbing at the University of Arkansas. He never went through any treatments. His pain subsided for a time but has resurfaced several times over the past year it has particularly been worse over the last few weeks. He is not having any leg pain at this time.

Dr. Miedema assessed “1. Low back pain....2. Degeneration of lumbosacral intervertebral disc....3. Lumbar spondylosis....4. Lumbosacral radiculopathy.” Dr. Miedema treated the claimant conservatively.

An MRI of the claimant's lumbar spine was taken on January 15, 2021 with the impression, "Lower lumbar spondylosis, worst at the L4-5 and L5-S1 levels. At L5-S1, there is a central disc extrusion measuring 7 mm."

A Change of Physician Order on July 20, 2021 provided in part, "the claimant is rescheduled with James Blankenship, M.D." Dr. James B.

Blankenship examined the claimant on July 26, 2021:

The patient has lower back and bilateral hip pain with buttock pain, right greater than left. He has occasional bilateral lower extremity pain to his feet. He has been having increasing cramping in his leg....He was injured on the job in November of 2020 when he was lifting some heavy equipment and had the immediate onset of pain. He did six months of physical therapy with some transient relief. He has been working at full duty. He had an LESI with no significant relief....

He has failed routine and usual conservative measures. I told him that given the fact that his pain duration is now eight months, it is unlikely that he is going to make any improvement over where he is. I told him the problem is not so much the herniated disc. The problem has to do with the malalignment and the instability.

I told him that if he elected for surgical intervention, my recommendation would be an anterior lumbar interbody arthrodesis at L5-S1 with posterior decompression and discectomy on the left-hand side with Bridgepoint clamping....

An MRI of the claimant's lumbar spine taken October 13, 2021 showed abnormalities which included "gross annular fissuring."

The parties stipulated that the employee-employer-carrier relationship existed on January 18, 2022. The claimant participated in a Functional Capacity Evaluation on January 18, 2022:

Mr. Robert Powers is referred to Functional Testing Centers, Inc. for the purpose of undergoing a comprehensive functional capacity evaluation to determine his current functional status....

Mr. Powers is referred with complaints of on-going pain in his low back which he attributed to injuries he sustained in a work-related accident....

Consistency of effort testing obtained during this evaluation indicate significant observational and evidence-based inconsistencies resulting in self-limiting behavior and sub-maximal effort. The results of this evaluation indicate that an unreliable effort was put forth, with 26 of 54 consistency measures within expected limits....

Mr. Powers completed functional testing on this date with **unreliable** results.

Overall, Mr. Powers demonstrated the ability to perform work in at least the **LIGHT** classification of work as defined by the US Dept. of Labor's guidelines over the course of a normal 8-hour workday with limitations as noted above....

Mr. Powers left the facility with the same gait patterns he had been exhibiting throughout testing. His pace of movement when leaving the testing area was measured at 2.7 ft/sec. and he exhibited no limp or altered gait pattern as he exited the facility and entered a vehicle....

Mr. Powers made no complaints or references to any new or different areas or regions of pain that he wasn't experiencing at the start of this evaluation.

The claimant testified on direct examination:

Q. At the end of that FCE, did you have an incident occur with your left knee?

A. Yes.

Q. What happened?

A. It was towards the end of the test and he had me – he put some weights on the ground and he asked me to pick it up. And then I asked him how much weight it was and he told me he couldn't tell me the weight, you know, what it was.

Q. Why were you concerned about the weight?

A. I didn't want to injure my back.

Q. Were you on restrictions at that point as well?

A. Yes.

Q. Okay. So then what happened?

A. I spread my legs and with my back being out, I used my knees and just go straight down on my back instead of bending my back. And I went to pick it up and when I got it, I don't know, anywhere from 12 inches off the ground or so and I just felt my left knee pop.

Q. Did you say anything about that?

A. Yes, I did....I told him my knee popped and he just kept going.

Q. Okay.

A. Like kind of ignored me.

Q. All right. So at that point you said you had the weight off the ground. What did you do then?

A. He told me to – once I had it up, he had – I don't know how many feet it was, but he had me to carry it across the room and then turn around and come back and set it in the chair.

Q. And how much testing did you do after that movement?

A. I think that was the end of it....

Q. Now, after you left, what did you do?

A. I went home and put an ice bag of peas on my left knee.

Q. Okay. And the next day, what happened?

A. I was hurting even worse. My whole body was aching, but my knee was really bad and I just sat there in my chair with an ice pack or a bag of peas on it.

Q. Did you try to contact the therapist?

A. I texted him.

At hearing, the claimant submitted into evidence a text message dated January 19, 2022: "This is Robert Powers. My left knee is injured from the test yesterday." The claimant received a reply, "You need to speak to your adjuster and Dr. Blankenship."

The claimant texted "Debbie" on January 20, 2022: "This is Robert Powers my left knee got injured from the test I need to see a doctor." The claimant received a reply, "I will forward this to adjuster regarding approval."

Muhannad Abdin, CNA noted on January 27, 2022, “Pt. reports injuring his left knee during his workmen’s compensation evaluation 1/18/22.” Mr. Abdin diagnosed “Left knee injury.”

Dr. Deborah Deere saw the claimant on January 28, 2022: “Has a workers comp back claim and was doing a functional study on 1/18, he was asked to lift a wt from the floor and injured his left knee. States that he felt a pop and was in a chair for 2 days with ice on it afterwards. Normal gait, no previous injury to that knee.” The claimant was provided a left neoprene knee sleeve, and he was referred to orthopedics.

Dr. Blankenship reported on January 31, 2022:

Mr. Powers has elected not to have surgery. We have discharged him from our clinic. I have reviewed his functional capacity evaluation. He gave unreliable effort with 26 out of 54 consistency measures. In that situation, it is unlikely that I would offer the patient surgical intervention if he changes his mind in the future. I am not saying that the gentleman is malingering. What I am saying is that he has inappropriate illness behavior. The gentleman does have sagittal plane malalignment with instability with annular fissuring which would be considered a disc herniation....He would qualify for 5% impairment to the body as a whole. His additional level would bring this up one more percent to a 6% impairment to the body as a whole....This narrative has been based on a reasonable degree of medical certainty and a review of his complete medical records and his functional capacity evaluations.

On January 31, 2022, a claims specialist with the respondent-carrier queried Charles Davidson and Casey Garretson, representatives of Functional Testing Centers, Inc. The claims specialist asked, among other

things, “Can you tell me if Mr. Powers reported an injury to his left knee at any time during his testing?” Mr. Davidson and Mr. Garretson replied in part:

You will see on his intake paperwork (Pain Drawing attached) that Mr. Powers had already indicated before any testing was performed that he had bilateral leg and knee pain....

Mr. Powers did not report “popping” of either knee and there was no audible crepitation or popping noted at any time during this evaluation.

Mr. Powers began testing with a normal gait pattern while walking at a moderate pace with normal arm swing as noted on page 7 of the report. All lifting was stopped by Mr. Powers with complaint of his low back that he described as “straining.” It was further documented that his lifts were symmetrical in nature with no shifts away from either lower extremity indicating any injury or pain process. He performed carrying of weight after completion of the lifting with no limp or any indication of knee pain or issues.

Mr. Powers did not complete any crouching tasks and in fact minimally squatted when asked to attempt a crouch position. He reported bilateral knee pain and fatigue with that single attempt and did this without favoring either knee. He did not report injury nor was there any indication of any change in his condition following this single trial as he then completed several hours of additional testing with no change in his gait or speed of movement when walking or performing general mobility tasks such as standing for prolonged periods.

Mr. Powers walking was re-assessed at the conclusion of the evaluation and his pace and gait patterns **remained completely normal**. He **did not have a limp present** and **actually walked at an improved pace as compared to that noted at the onset of the evaluation**.

At no time during or immediately after the FCE did Mr. Powers reports (sic) any injury to his left knee....

In conclusion, there is absolutely no indication of injury during this FCE regardless of Mr. Powers complaints.

The claimant signed a Form AR-N, Employee's Notice Of Injury, on February 4, 2022. The claimant reported on the Accident Information section of the Form AR-N that the date of accident was January 18, 2022 and that he notified the employer on January 19, 2022. The claimant wrote, "Left knee was damaged during functional test required by workmans comp." The claimant also wrote, "Was not told the weight that I picked up/they would not tell me the weight. They refused to tell me the weight past my weight limit." It was also contended on the Form AR-N, "The employee was at a testing site for workers comp. for a back injury. He was being tested to see if he was ready to go back to work. During the testing he was told to pick up an unknown amount of weight. He felt a pop to his left knee when trying to pick up the weights."

A claims specialist informed the claimant on February 7, 2022, "After completing my investigation into the claim you filed for an injury on 01/18/2022, it appears your claim does not meet the criteria for compensability. Therefore, I must respectfully deny your claim for workers' compensation benefits."

The claimant filed a Form AR-C, Claim For Compensation, on February 16, 2022. The Accident Information section of the Form AR-C indicated that the Date of Accident was January 18, 2022. The claimant

wrote, “I injured my left knee as a compensable consequence of my compensable back injuries of September 2019 and November of 2020.”

Dr. Christopher P. Dougherty treated the claimant for left knee pain on March 16, 2022 and reported “Complete tear, knee, anterior cruciate ligament.” Dr. Dougherty noted that the date of onset was 01/2022, “Context: Return to work ability test.” Dr. Dougherty assessed, “His exam is consistent with a tear of the left ACL. He will need [an] MRI of the left knee for further assessment.”

An MRI of the claimant’s left knee was taken on March 23, 2022 with the following impression:

1. Minimal heterogeneity of the ACL suggestive of a very mild sprain. ACL is intact.
2. Mild subcutaneous swelling along the anterior aspect of the knee.

The claimant followed up with Dr. Dougherty on March 30, 2022: “His MRI of the left knee was reviewed and discussed today. It shows a mild ACL sprain. We will treat this conservatively at this time. He will get started in physical therapy. He will return in 2 months for recheck.”

Dr. Dougherty referred the claimant to Trinity Rehab on March 30, 2022.

A pre-hearing order was filed on April 21, 2022. According to the text of the pre-hearing order, the claimant contended that he was “entitled

to medical benefits for his left knee, injured as a result of his compensable back injuries. The claimant reserves all other issues.”

The parties stipulated that the respondents “have controverted the claim in regarding claimant’s left knee.” The respondents contended, “The claimant reported having an injury to his low back on August 29, 2019 which has been accepted as compensable. The respondent has provided the claimant with medical treatment reasonable and necessary for the compensable injury, including treatment with Dr. Mark Miedema who treated the claimant conservatively with injection, physical therapy, and an MRI. No surgery was recommended by Dr. Miedema, only Gabapentin and Medrol has been prescribed, and no work restrictions were given by Dr. Miedema. In April 2021, the claimant reported having had an injury to his low back in November 2020. The respondent accepted this as a medical only claim, and the claimant continued to be provided treatment for his low back for his August 29, 2019 injury. The claimant had his onetime Change of Physician to Dr. Blankenship, who saw the claimant on July 26, 2021 and additional treatment with Dr. Blankenship, including a second MRI study was provided by respondent. Dr. Blankenship offered the claimant lumbar interbody arthrodesis at L4-5 and L5-S1, but the claimant declined surgery. Dr. Blankenship then ordered a Functional Capacity Evaluation. At the January 18, 2022 FCE, the claimant performed unreliably with 26 out of 54

consistency measures, after which Dr. Blankenship wrote in his January 31, 2022 letter that he would not operate on this claimant because of the claimant's 'inappropriate illness behavior' Dr. Blankenship discharged the claimant from (sic) his clinic and released the claimant at maximum medical improvement. After this FCE appointment, at which the claimant tested unreliably, the claimant alleged to have sustained an injury to his left knee during the FCE. Respondent contends that the claimant did not sustain a compensable injury to his left knee at the FCE or as a compensable consequence of a compensable injury. The claimant was not taken off work by his physicians, and Dr. Blankenship released the claimant at MMI on January 31, 2022 at which time Dr. Blankenship assigned the claimant a 6% rating to the body as a whole. The claimant returned to work and respondent has accepted this rating and is paying permanent partial disability benefits to the claimant. The respondents reserve the right to raise additional contentions, or to modify those stated herein, pending completion of discovery."

The parties agreed to litigate the following issue: "1. Whether claimant is entitled to medical benefits regarding to his left knee."

The claimant followed up with Dr. Dougherty on June 1, 2022: "He was seen in the office today as a follow up for continued left knee pain. He has been working on a home exercise program with only slight

improvement. He will continue with this and we will see him back as symptoms warrant and he gets everything worked out with work.” Dr. Dougherty assessed “1. Sprain of anterior cruciate ligament of knee....Patient will return to the office as needed.”

After a hearing, an administrative law judge filed an opinion on August 18, 2022. The administrative law judge found that the claimant proved he was entitled to additional medical treatment “for his left knee injury.” The respondents appeal to the Full Commission.

II. ADJUDICATION

If an injury is compensable, then every natural consequence of that injury is also compensable. *Hublely v. Best Western Governor’s Inn*, 52 Ark. App. 226, 916 S.W.2d 143 (1996). The basic test is whether there is a causal connection between the two episodes. *Jeter v. B.R. McGinty Mechanical*, 62 Ark. App. 53, 968 S.W.2d 645 (1998). The burden is on the employee to establish the necessary causal connection. *Nichols v. Omaha Sch. Dist.*, 2010 Ark. App. 194, 374 S.W.3d 148. Whether there is a causal connection is a question of fact for the Commission. *Jeter, supra*.

An administrative law judge found in the present matter, “2. Claimant has met his burden of proof by a preponderance of the evidence that he is entitled to additional medical treatment from Dr. Christopher Dougherty for his left knee injury.” It is the duty of the Full Commission to

enter findings in accordance with the preponderance of the evidence and not on whether there is substantial evidence to support an administrative law judge's findings. *Roberts v. Leo Levi Hospital*, 8 Ark. App. 184, 649 S.W.2d 402 (1983). The Full Commission enters its own findings in accordance with the preponderance of the evidence. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348 (1990).

In the present matter, the Full Commission finds that the claimant sustained a compensable injury to his left knee as a natural consequence of the claimant's compensable back injury. The claimant has been employed as a Master Plumber for the respondents, University of Arkansas, since 2005. The claimant sustained a work-related back injury on August 29, 2019, and the respondents accepted the injury as compensable. The claimant apparently sustained another work-related back injury in November 2020 which was also accepted as compensable by the respondents. The claimant was treated conservatively for his compensable back injuries. The claimant received a Change of Physician to Dr. Blankenship on July 20, 2021. Dr. Blankenship recommended surgery, but the claimant declined the surgical method proposed by Dr. Blankenship.

The claimant participated in a Functional Capacity Evaluation on January 18, 2022. Casey Garretson and Charles Davidson with Functional Testing Centers, Inc. concluded that the claimant gave an "invalid" and

“inconsistent” effort. The claimant testified that he injured his left knee while attempting to lift a heavy weight during the Functional Capacity Evaluation. The claimant testified that the evaluators “kind of ignored” him and continued with the evaluation. The claimant testified that, after completing the Functional Capacity Evaluation, he returned home and placed “an ice bag of peas” on his knee.

The Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony deemed worthy of belief. *Holloway v. Ray White Lumber Co.*, 337 Ark. 524, 990 S.W.2d 526 (1999). The Full Commission finds in the present matter that the claimant was a credible witness. First, the documentary evidence of record corroborated the claimant’s testimony. The record indicates that the claimant sent a text message to one of the functional capacity evaluators the day after the Functional Capacity Evaluation, January 19, 2022, and informed him, “My left knee is injured from the test yesterday.” The evaluator replied through a text, “You need to speak to your adjuster and Dr. Blankenship.” The claimant also sent a text message to an individual named “Debbie” on January 20, 2022 and informed her, “This is Robert Powers my left knee got injured from the test I need to see a doctor.” The claimant received a reply, “I will forward this to adjuster regarding approval.”

Additionally, the medical providers corroborated the claimant's testimony. A CNA noted on January 27, 2022, "Pt. reports injuring his left knee during his workmen's compensation evaluation 1/18/22." The CNA diagnosed "Left knee injury." Dr. Deere reported on January 28, 2022, "Has a workers comp back claim and was doing a functional study on 1/18, he was asked to lift a wt from the floor and injured his left knee. States that he felt a pop and was in a chair for 2 days with ice on it afterwards." The claimant was treated conservatively by Dr. Deere and Dr. Dougherty. An MRI of the claimant's left knee on March 23, 2022 showed "a very mild sprain" and "mild subcutaneous swelling along the anterior aspect of the knee." Dr. Dougherty confirmed on March 30, 2022 that MRI "shows a mild ACL sprain." Dr. Dougherty referred the claimant for rehabilitation.

The Full Commission finds that the claimant was a credible witness, and that the evidence of record corroborated the claimant's testimony. We find in the present matter that the claimant's testimony was entitled to more evidentiary weight than the reports of Casey Garretson and Charles Davidson. Based on the claimant's credibility and the corroborating evidence of record, the Full Commission finds that the claimant injured his left knee during the January 18, 2022 Functional Capacity Evaluation.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant sustained a compensable left knee injury as a natural

consequence of his compensable back injury. The claimant proved that the medical treatment of record provided in connection with his compensable left knee injury, including the treatment provided and recommended by Dr. Dougherty, was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to a fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's determination that the claimant sustained a compensable left knee injury as a natural consequence of his compensable back injury and that the related treatment provided for his left knee, including the treatment provided and recommended by Dr. Dougherty was reasonable and necessary.

The claimant sustained compensable back injuries in August 2019 and November 2020, which were accepted by the Respondents. The claimant alleges he sustained an injury to his left knee during a functional capacity exam (FCE) on January 18, 2022. The facts presented do not support the claimant's contentions. On his FCE intake paperwork, the claimant "had already indicated before any testing was performed that he had bilateral leg and knee pain." (Resp. Ex.2, P. 33). During the intake interview, the claimant reported that he had additional pain in both knees. *Id.* "He also indicated prior to testing that he had moderate difficulty with squatting, kneeling and climbing stairs that he stated was due to bilateral knee pain." *Id.* The claimant's efforts during the FCE were inconsistent. (Resp. Ex. 2, P. 14). This inconsistency resulted in "self-limiting behavior and sub-maximal effort" with only 26 of 54 consistency measures falling within the expected limits. *Id.* The claimant's conduct and self-reported pain are "indicative of symptom magnification." (Resp. Ex. 2, P. 15). The FCE evaluator reported that the claimant "did not report 'popping' of either knee and there was no audible crepitation or popping noted at any time during this evaluation." (Resp. Ex. 2, P. 33). The claimant performed normally throughout the FCE, and "it was further documented that his lifts were symmetrical in nature with no shifts away from either lower extremity indicating any injury or pain process. He performed carrying of weight after

completion of the lifting with no limp or any indication of knee pain or issues.” *Id.* The claimant did not complete any crouching tasks during the FCE and complained of *bilateral* knee pain during the single attempt at squatting. *Id.* He did not report any injury and there was no indication of any change in his condition. (Resp. Ex. 2, P. 34). The claimant went on to complete “several hours of additional testing with no change in his gait or speed of movement.” *Id.* Ultimately the claimant’s “walking was re-assessed at the conclusion of the evaluation and his pace and gait patterns **remained completely normal.** He **did not have a limp present** and **actually walked at an improved pace as compared to that noted at the onset of the evaluation.** *Id.* (emphasis in original). The claimant did not report any injury to his left knee during or immediately after the FCE and denied any injury when asked about any new areas of pain *Id.* Unreliable effort on a functional capacity exam is a relevant factor in determining the weight of a claimant’s testimony and the Commission is within its rights to afford greater credibility to the weight of the medical evidence when a claimant’s testimony is unreliable. *Willis v. Ark. Dep’t of Corr.*, 2021 Ark. App. 50, 616 S.W.3d 679 (2021), citing *O’Guinn v. Little River Mem’l Hosp.*, 2013 Ark. App. 593, 430 S.W.3d 150 (2013).

After the claimant reported his left knee injury, the respondent carrier sent the claimant to Pat Walker clinic for treatment, but there were no

objective indications of injury at that time. (Resp. Ex. 1, P. 55-57). Dr. Deborah Deere's report from that visit reflects "no swelling or effusion, no pain or crepitus with patellar compression, full [range of motion], no joint line tenderness." (Resp. Ex. 1, P. 56).

When the claimant later saw Dr. Christopher Dougherty of his own volition, there was no indication of an ACL tear on an MRI and there was only evidence of a very mild sprain. (Resp. Ex. 1, Pp. 66, 69). In fact, the ACL was intact. The claimant has not missed any work due to this alleged injury and treated with home exercises. He is still able to drive, walk, and travel. (Trans. Pp. 31-32). The sole source of information regarding if and when this injury took place is the claimant himself. Arkansas Code Annotated section 11-9-102(4)(D) requires that a compensable injury must be established by medical evidence supported by objective findings. Without the support of objective findings, a diagnosis of a sprain is insufficient to establish compensability. *Smith v. Howard Cnty. Children's Ctr.*, 2005 Ark. App. LEXIS 423 (2005).

Despite the conflicting testimony and evidence, the ALJ gave great weight to the claimant's testimony, appearing to wholly disregard reports from the FCE examiner, stating that he "found him to be a credible witness . . . The way he described how he injured his left knee is plausible." (Opinion, P. 10). The ALJ describes that claimant as "cautious about doing

anything to his injured back during the exam,” and finds “it hard to believe that he would not have mentioned an injured knee prior to the evaluation.”

Id. However, what the ALJ sees as caution is considered “inappropriate illness behavior” by Dr. James Blankenship. (Resp. Ex. 1., P. 58).

It is well settled that while a case may ultimately “boil down” to the credibility of a claimant, a party’s testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994), citing *Lambert v. Gerber Products Co.*, 14 Ark. App. 88, 684 S.W.2d 842 (1985). “[T]he Commission is not required to believe the testimony of the claimant or other witnesses but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief.” *Wright v. Conway Freight*, 2014 Ark. App. 451, 441 S.W.3d 45 (2014), citing *Cottage Café, Inc. v. Collette*, 94 Ark. App. 72, 226 S.W.3d 27 (2006).

Because of the claimant’s unreliable performance at the FCE, the Commission is entitled to review the basis for a doctor’s opinion in deciding the weight and credibility of the opinion and medical exhibits. *Maverick Transportation v. Buzzard*, 69 Ark. App. 128, 10 S.W.3d 467 (2000). A physician’s special qualifications and whether a physician rendering an opinion ever actually examined the claimant are factors in considering the

weight and credibility of an opinion. *Barksdale Lumber Co., et al v. Lois McAnally*, 262 Ark. 279, 557 S.W.2d 868 (1977).

I do not find the claimant's testimony credible. The fact the claimant was inconsistent with his efforts at the FCE shows he is exaggerating his claim. Based on his refusal to put forth reliable and good faith effort during his FCE so that his physical condition could accurately be assessed, I would give very little, if any, weight to his testimony. The FCE reports made a part of the record clearly show the claimant was not forthcoming about the extent of his injuries, was not credible in testing, and did not sustain a compensable injury to his left knee on June 18, 2022 during his functional capacity exam.

For the reasons stated above, I respectfully dissent.

MICHAEL R. MAYTON, Commissioner