

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G801948

TERESA REED,
EMPLOYEE

CLAIMANT

MILLER COUNTY JUDGE,
EMPLOYER

RESPONDENT

AAC RISK MANAGEMENT SERVICES,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED JUNE 16, 2022

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

Claimant represented by the HONORABLE MICHAEL W. BOYD, Attorney at Law, Magnolia, Arkansas.

Respondents represented by the HONORABLE JASON M. RYBURN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as Modified.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed December 13, 2021. The administrative law judge found that the statute of limitations barred the claim. After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that she sustained a compensable injury to her left hip or back.

I. HISTORY

Teresa Ann Reed, now age 59, testified that she served as elected Treasurer for Miller County, Arkansas. The claimant treated at Collom &

Carney Clinic on January 10, 2014: “This patient presents today with a 1 day history of a left knee injury. She slipped and her left leg bent underneath her and she twisted her knee.” A physician’s assistant assessed “Pain in limb.” An MRI of the claimant’s left knee on January 17, 2014 showed, among other things, “2) Small joint effusion with a popliteal cyst.” The impression of Dr. Darius F. Mitchell, III on January 27, 2014 was “Knee sprain.”

The parties initially stipulated that the employment relationship existed at all pertinent times, “including a specific date to be specified in 2016 when the claimant sustained compensable injuries to her right leg and right knee for which the respondents paid medical and indemnity benefits.” The claimant testified, however, that she suffered a nonwork-related right knee injury at home in 2016. The claimant treated at Collom & Carney Clinic on October 26, 2016: “The patient is here today with complaint of right knee pain. She has had pain for several weeks. She does not recall an injury prior to the onset of her symptoms. 2 days ago she was stepping up into a chair and felt a pop in her knee. Since that time the pain has been worse.” An x-ray of the claimant’s right knee on October 26, 2016 indicated, “Knee popped on 10/24.” The impression was “No acute osseous abnormality.”

The parties stipulated that the employment relationship existed “on October 20, 2017, when the claimant allegedly sustained compensable injuries to her right leg, right upper thigh, right hip, and lower back.” The claimant testified on direct examination:

Q. And were you working in the position as elected Treasurer of Miller County on October the 20th of 2017?

A. Yes.

Q. And did you suffer a fall and injuries on that date, October 20, 2017?

A. Yes, sir.

Q. Tell the Court what happened.

A. It was about 4:20 in the afternoon, and we close at 4:30. I left to go to the restroom before we closed our office. I got about midways to the restroom, and as I rounded a corner, my right foot slipped and I fell on my left knee and my palm (indicating), caught myself. But when I fell, somehow, my body flipped in the air and I landed going the opposite way with my feet out like this (indicating), going that way (indicating).

Q. So you were headed in one direction, went around the corner. Which foot slipped?

A. My right foot slipped....

Q. So what part of your body contacted the concrete floor first?

A. My left knee and my palm (indicating) of my left hand....I flipped in the air, and that's when I felt a pop. And I landed face – my feet up, facing the opposite direction.

Q. You said you felt a pop?

A. Yes, sir.

Q. And what body part – or could you locate where that came from?

A. In the back of my right thigh.

Q. Back of your right thigh. Did you later learn that was your hamstring?

A. Yes, sir....

Q. Were you able to get up?

A. It was a struggle, but yes, I got up.

Q. And if you recall, at that moment, could you tell what all was injured at that point in time?

A. I hurt so bad, I could barely walk. I just prayed to get in the bathroom. That was the closest thing to me to get in where I could try to compose myself because I knew I had to walk all the way back to my office....

Q. What sort of things were you feeling that evening?

A. I had – in my right hip, it was just a terrible, like a throbbing, deep pain.

Q. Uh-huh.

A. And actually, I hurt all over from the fall.

The claimant signed a Form AR-N, Employee's Notice Of Injury, on October 27, 2017. It was written on the Form AR-N that an accident occurred at 4:20 p.m. on October 20, 2017. It was written that the claimant injured her "Right side – Hip – upper thigh." It was indicated on the Form AR-N that the cause of injury was: "Walking to office – turned corner and went down – landing on my right side."

According to the medical evidence, the claimant treated at HealthCare Express on October 29, 2017:

The patient presents with a chief complaint of constant pain of the right hip and right thigh since Fri, October 20, 2017 at 4:20 p.m....The patient reports it was the result of an injury that occurred on 10/20/2017, which was work related. Patient denies that any non-work related event or illness possibly contributed to or is related to development of symptoms. Pt reports that she was walking down a hallway that they keep waxed. She reports that her left foot went out and she landed on her left hand and knee. She reports that she flipped and heard something pop on right hip/thigh and she landed on her buttocks. She is having pain down the back of her right leg. No numbness or tingling. She reports that it feels like something is tight and might break....

A nurse practitioner diagnosed “Strain of muscle, fascia and tendon of right hip[.]” The treatment plan included, “Recommend physical therapy, will have to be approved through worker comp department.”

The claimant followed up at HealthCare Express on November 6, 2017: “Pt states that she fell on left knee and left hand when her right leg slipped out from her at work. States that she is having pain to right knee, medially at times and some mild pain to left knee where she had a bruise and states that it just feels like a bruise....States that she has pain in right hip and down right posterior thigh and states that when she first injured right leg, she felt something pop in right posterior thigh and it felt as if she was sitting on something uneven but never had any bruising to that area. Denies any back pain or numbness/tingling down legs.”

A nurse practitioner’s diagnoses on November 6, 2017 were “R knee strain, R hip/thigh strain, L knee contusion, L hand contusion.”

Ryan D. Schaeffer, apparently a physical therapist, saw the claimant on December 4, 2017. Mr. Schaeffer’s diagnoses included “1. Hip pain, right. 2. Other intervertebral disc displacement. 3. Low back pain. 4. Contusion of unspecified front wall of thorax, subsequent encounter. 5. Unspecified fracture of sternum, subsequent encounter for fracture with routine healing....Pt gave a good effort with all of today’s exercises, with no

reports of increased pain level.” The claimant was provided a program of physical therapy.

The claimant followed up at HealthCare Express on December 18, 2017: “Pt states that she has completed physical therapy. States she doesn’t really have pain or problems with ROM to left shoulder anymore and she doesn’t have pain in right hip anymore, however, she does continue to have some pain in right knee....States hx of fall with knee pain about 1 year ago but that it had improved and the pain she is feeling now has been present since most recent fall....Pt to return to work and continue with work restrictions; continue exercises as learned through PT.”

An MRI of the claimant’s right hip, right femur, and right knee was taken on January 11, 2018 with the following impression:

1. MR findings consistent with moderately severe injury of the right conjoined hamstring tendon with marked thickening, inflammation, and near complete insertional tear. No evidence of tendon retraction.
2. Minimal DJD of the right hip, symmetric to the left.
3. Marked diffuse marrow heterogeneity noted throughout the bony pelvis and femurs. Although findings may often represent idiopathic finding possibly related to demineralization or marrow conversion, there is concern for marrow infiltration as occasionally observed in myeloma or leukemia. Further evaluation is recommended.
4. Otherwise, negative MR appearance of the right femur.
5. Medial meniscus demonstrates prominent mucoid degeneration and possible small horizontal tear of the body and posterior horn with suspected prominent transverse tearing of the posterior horn near the meniscal root.
6. Moderate DJD of the medial compartment with mild degenerative changes of the patellofemoral joint.

7. Small joint effusion of the right knee.

Dr. Mitchell saw the claimant on February 7, 2018: “Teresa comes in today for new problem of her right hip. The patient states she fell on her right hip and right thigh on 10/29/2017. She was seen by Healthcare Express. She also has injury to her right knee. [An] MRI showed meniscal tear of her medial meniscus. An MRI of her hip also showed or pelvis showed an avulsion of the conjoin tendon with a 4 cm displacement.” Dr. Mitchell’s impression was “Right medial meniscal tear and right posterior hamstring avulsion in the origin of the hamstring. TREATMENT PLAN: At this point, I think she needs operative intervention for repair of hamstring avulsion.”

Dr. Mitchell performed surgery on March 20, 2018: “Repair of the right hamstring origin.” The pre- and post-operative diagnosis was “Chronic hamstring rupture of the conjoined tendon on the right hamstring origin.” Dr. Mitchell noted, “This is a 55-year-old female who unfortunately fell at work and sustained an injury to her right proximal hamstring.”

Dr. Mitchell planned on April 2, 2018, “At this point, we are going to go ahead and let her [begin] physical therapy.” Dr. Mitchell signed a note on April 30, 2018 indicating that the claimant could return to full-duty work on May 7, 2018. Dr. Mitchell’s impression on June 13, 2018 was

“Hamstring repair with x-rays that show no abnormalities and a medial meniscal tear.”

The claimant was discharged from physical therapy on June 15, 2018.

The claimant testified on direct examination:

Q. If you recall, when did you first start having some symptoms that you noticed in your left hip?

A. My left hip? It was after the surgery, because my right leg hurt so bad, and it was after the surgery in March of '18....After the physical therapy, I noticed my – it was getting better, but then I would – it was more noticeable how bad the left side was hurting....The hamstring was getting better, and then that's when I noticed how much pain I was actually having on the left side.

Dr. Richard B. Sharp reported on July 12, 2018:

1. Workers Compensation Impairment Rating.

Referred by Darius Mitchell, M.D., Employer: Miller County, Arkansas, Date of Injury: 10/29/2017, Chief Complaint: Right hip discomfort, Reason for Evaluation: Determination of Maximal Medical Improvement and Impairment Rating.

2. Right knee and hip discomfort

This is a 55-year-old female who describes a fall at work 10/29/17. She was at the courthouse and fell down onto her knee and then onto her right hip. She was seen at healthcare express 2 weeks later with continued complaints of right leg pain. MRI showed a meniscus tear and a hamstring tear. Patient went to physical therapy but did not help. Eventually she was seen by Dr. Mitchell and underwent surgery for right hamstring avulsion. She did well after surgery with only complaints of mild pain and tenderness at the right gluteal region. No complaints of knee pain after a knee injection 4 weeks ago by Dr. Mitchell. MRI showed meniscal tear of her medial meniscus and her hip showed an avulsion of the conjoin tendon with a 4 cm displacement. She has returned back to work without issue....

Based on AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition, page 78, table 40 and 41, the patient would receive 0% permanent impairment rating for normal range of motion of the right hip.

Dr. Mitchell saw the claimant on January 21, 2019: “Teresa comes today for evaluation of her left hip since her fall when she fell on her left hip in 2016. She has on and off pain in her left side. Now, she has had numbness back and forth. She thought it would resolve. Now, she has weakness in this left side. She describes it as buttocks related pain that radiates down the anterior lateral aspect of her leg and down into her ankle.” Dr. Mitchell’s impression was “Piriformis syndrome status post fall. TREATMENT PLAN: At this point, I am going to start her on treatment for this. I would like to have her see Dr. Emechebe about the possibility of piriformis injection and treatment for L5 radiculopathy versus sciatic radiculopathy.”

Dr. Mitchell noted on January 30, 2019:

Unfortunately, I got a note back from risk management because they apparently cannot read. That states that they want to know without reasonable degree of medical certainty which is the term they only use that her work injury occurred on October 20, 2017. Only God knows if this happened on that date, but I can tell you that Ms. Reed has been complaining since that time of left base, left-sided symptoms. She had a hamstring pull that she was detached from the pelvis and probably had inability to ascertain appropriate changes on her left side. Now she says, she complained of her back at that time. I am not a back doctor. I do not know if this is a true statement but yes I do feel like she has piriformis syndrome and yes it is related to work. If she does need

some more treatments, I suggest she been seen at Healthcare Express about the possibility of injections.

The claimant corresponded with the Arkansas Workers' Compensation Commission via electronic mail on February 15, 2019: "I would like to have a hearing on my Worker's Compensation Claim." The claimant's correspondence was stamped "Filed" with the Clerk of the Commission on February 15, 2019.

The claimant testified that she presented a questionnaire to Dr. Mitchell. The questionnaire, included in the record with the claimant's exhibits, pertained to the claimant's alleged injuries, physical limitations, and medical treatment. Dr. Mitchell filled out the questionnaire on or about March 8, 2019. Dr. Mitchell's handwriting appeared to indicate that he diagnosed "R hamstring tear" and "Piriformis." Dr. Mitchell indicated "Yes" to the question, "2. In your opinion do you feel that the problems she is presently having with her left hip and leg are as a result of or were contributed to by an on-the-job fall occurring in October 2017?" Dr. Mitchell wrote that he recommended "L piriformis injections."

The claimant returned to Dr. Mitchell on May 8, 2019:

This 56 year old female presents for L HIP PAIN....
HISTORY OF PRESENT ILLNESS: Teresa has come in on her own insurance now. She has some trochanteric bursitis and would like to have it injected. She is also having some numbness and weakness in her leg. She feels like she had some issues with going up and down stairs and had some struggles with being able to complete these tasks....

We will go ahead and get her set up to see Dr. Wages about piriformis injection....

The record indicates that the claimant submitted a “Claimant’s Questionnaire” to the administrative law judge on or about May 10, 2019. The Questionnaire indicated that the date of accident was October 20, 2017. Following the query “13. STATE REASONS WHY YOU HAVE ASKED FOR A HEARING,” the claimant wrote “Entitled to additional medical treatment.”

The claimant followed up with Dr. Mitchell on July 3, 2019:

The patient comes today again on her Providence Insurance to discuss her piriformis and trochanteric bursa injection that helped her some. She still has numbness that goes down on her leg posteriorly. She still has weakness in her quad. She feels like it is kind of buckle (sic). She has pain in her lumbar spine. She has pain with internal and external rotation.
IMPRESSION: Piriformis syndrome of the left hip that is a former injury related as well as potential low back stenosis and lumbar stenosis.
TREATMENT PLAN: I will like for her to go ahead and be seen about this injection. We talked to Dr. Wedges about this and unfortunately she was decided to go again despite her work comp lawyer and this is going to delay her treatment hopefully in the future. She will get treatment for this. I am going to send her to Dr. Johnson on her Sigma.

Dr. Mitchell stated on or about August 14, 2019, “Teresa injured her hip in October 2017. It was an inadvertent placement of the date so October 2017 is when she injured her left hip as well as her spine.”

Dr. Matthew M. Johnson performed a lumbar epidural steroid injection on October 4, 2019. The pre- and post-operative diagnosis was

“Lumbar radiculopathy.” Dr. Johnson noted on or about October 18, 2019, “Lumbar x-ray from 12/19/2018 demonstrates mild degenerative disc disease and facet arthropathy at L2-S1. There is minimal subluxation at L4-5 with flexion and extension.” Dr. Johnson assessed “Chronic pain syndrome” and “Lumbar radiculopathy.”

Dr. Johnson performed additional epidural steroid injections on October 25, 2019 and December 13, 2019.

The assessment of Dr. Jeff Josma on or about January 21, 2020 was “1. Lumbar radiculopathy,” “2. Trochanteric bursitis – left,” and “3. Retrolisthesis.” Dr. Josma performed injections and provided follow-up treatment.

A pre-hearing order was filed on December 7, 2020. According to the text of the pre-hearing order, the claimant contended, “The claimant contends she is entitled to additional medical and indemnity benefits; and that she sustained injuries to her right leg, right upper thigh, right hip, and lower back on October 20, 2017, and she is entitled to medical and indemnity benefits. The claimant specifically reserves any and all other issues for future litigation and/or determination.”

The parties stipulated, “The respondents controvert the alleged October 20, 2017 claim in its entirety.” The respondents contended, “The respondents contend they will assert the following defenses: The

claimant's current symptoms are not related to her 2017 injury. The current symptoms are not compensable, including any back/spine problems. The statute of limitations has run on any injury from 2016. The respondents reserve the right to amend and supplement their contentions after the completion of any necessary investigation and discovery. The respondents specifically reserve any and all other issues for future litigation and/or determination."

The parties agreed to litigate the following issues:

1. Whether the claimant sustained alleged "compensable injuries" within the meaning of the Arkansas Workers' Compensation Act (the Act), to her left hip; and right upper thigh, right hip, and lower back on October 20, 2017.
2. If these injuries are deemed compensable, whether and to what extent the claimant is entitled to medical, TTD and PPD benefits.
3. Whether any or all of the alleged injuries are related to the 2016 compensable injury and, if so, whether the claimant's claim for additional medical and indemnity benefits is barred by the applicable statute of limitations pursuant to Ark. Code Ann. §11-9-702 (2020 Lexis Supplement).
4. Whether the claimant's attorney is entitled to a controverted fee based on these facts.
5. The parties specifically reserve any and all other issues for future litigation and/or determination.

A hearing was held on September 23, 2021. At that time, the claimant's attorney stated that the claimant did not contend she was entitled to benefits related to an injury occurring in 2016; rather, the claimant contended that she sustained a compensable injury to her left hip and low

back on October 20, 2017. The respondents stated that they accepted compensability of an injury to the claimant's right hamstring.

An administrative law judge filed an opinion on December 13, 2021. The administrative law judge found, among other things, that the statute of limitations barred the claimant's claim that she sustained compensable injuries to her left hip and lower back. The administrative law judge therefore dismissed the claim. The claimant appeals to the Full Commission.

II. ADJUDICATION

A. Compensability

Ark. Code Ann. §11-9-102(4)(Repl. 2012) provides, in pertinent part:

(A) "Compensable injury" means:

(i) An accidental injury causing internal or external physical harm to the body ... 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 also be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2012). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012).

The employee has the burden of proving by a preponderance of the evidence that she sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Repl. 2012). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

In the present matter, the claimant contends that her “left hip and low back injuries were caused by her fall while on the job in October 2017.” The Full Commission finds that the claimant did not prove she sustained a compensable injury to her left hip or low back in accordance with Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2012).

The claimant is a long-time employee of the respondents and was eventually elected Treasurer for Miller County. The claimant was involved in a work-related accidental injury on October 20, 2017. The claimant testified that she slipped and fell backwards while walking near the end of the workday. The claimant testified that as a result of the fall she felt a “pop” in the back of her right thigh. The respondents eventually agreed that the claimant sustained a compensable injury to her right hamstring as a result of the October 20, 2017 accidental injury. Dr. Mitchell performed a right hamstring repair on March 20, 2018. The pre- and post-operative diagnosis was “Chronic hamstring rupture of the conjoined tendon on the right hamstring origin.” Dr. Sharp noted on July 12, 2018 that the claimant

had “returned back to work without issue,” and he assigned the claimant a 0% permanent anatomical impairment rating. The claimant does not contend on appeal that she is entitled to additional medical treatment in connection with her compensable right hamstring injury, in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012).

The Full Commission finds that the claimant did not prove by a preponderance of the evidence that she sustained a compensable injury to her left hip or back. The claimant slipped and fell at work on October 20, 2017, sustaining a compensable injury to her right hamstring. The claimant signed a Form AR-N, Employee’s Notice Of Injury, on October 27, 2017 and asserted that she had injured her “Right side – Hip – Upper thigh.” The claimant did not assert that she injured her left hip or back. The initial medical evidence did not demonstrate that the claimant injured her left hip or back on October 20, 2017. The claimant treated at HealthCare Express on October 29, 2017 for pain in her right hip and thigh. A nurse practitioner assessed “Strain of muscle, fascia and tendon of right hip.” The nurse practitioner plainly noted on November 6, 2017 that the claimant “*Denies any back pain* or numbness/tingling down legs [emphasis supplied].” The diagnoses on November 6, 2017 were “R knee strain, R hip/thigh strain, L knee contusion, L hand contusion.” The medical records did not demonstrate that the claimant injured her left hip or back. We recognize the

physical therapist's notes on December 4, 2017 which included "Hip pain, right," "Other intervertebral disc displacement," and "Low back pain."

Nevertheless, these PT notes from December 4, 2017 do not demonstrate that the claimant sustained an accidental injury to her left hip or back on October 20, 2017.

The Full Commission reiterates Dr. Sharp's implicit determination of maximum medical improvement with 0% impairment on July 12, 2018. Dr. Mitchell, the treating surgeon, reported for the first time on January 21, 2019 that the claimant complained of left hip pain. Dr. Mitchell initially attributed the claimant's left hip pain to an injury occurring in 2016 rather than the October 20, 2017 compensable injury to the claimant's right lower extremity. Dr. Mitchell completed a questionnaire for the claimant on or about March 8, 2019 and checked "Yes" to the question, "2. In your opinion do you feel that the problems she is presently having with her **left hip and leg** are as a result of or were contributed to by an on-the-job fall occurring in October 2017?" Dr. Mitchell's impression on July 3, 2019 was "Piriformis syndrome of the left hip that is a former injury related as well as potential low back stenosis and lumbar stenosis." The Commission has the authority to accept or reject a medical opinion and the authority to determine its medical soundness and probative force. *Green Bay Packaging v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 692 (1999). In the present matter, the Full

Commission attaches minimal evidentiary weight to Dr. Mitchell's opinion that the claimant's left hip or low back symptoms were causally related to the October 20, 2017 compensable injury.

The Full Commission finds that the claimant did not prove by a preponderance of the evidence that she sustained a "compensable injury" to her left hip or back. The claimant did not prove that she sustained an accidental injury causing internal or external physical harm to her left hip or back. The claimant did not prove that she sustained an injury to her left hip or back which arose out of and in the course of employment, required medical services, or resulted in disability. The claimant did not prove that she sustained an injury to her left hip or back which was caused by a specific incident or was identifiable by time and place of occurrence on October 20, 2017. In addition, the claimant did not establish a compensable injury to her left hip or back by medical evidence supported by objective findings. Neither the reports of "Piriformis syndrome" nor "Lumbar radiculopathy" established a compensable injury to the claimant's left hip or back. Nor did Dr. Johnson's notation of "subluxation at L4-5 with flexion and extension" on October 18, 2019 establish a compensable injury to the claimant's back allegedly occurring on October 20, 2017.

After reviewing the entire record, therefore, the Full Commission finds that the claimant did not prove by a preponderance of the evidence

that she sustained a compensable injury to her left hip or back on October 20, 2017. The respondents accepted an October 20, 2017 compensable injury to the claimant's right lower extremity, for which the claimant reached maximum medical improvement no later than July 12, 2018. The Full Commission finds that the claimant did not prove that the medical treatment of record provided after July 12, 2018 was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). Because we find that the claimant did not prove she sustained a compensable injury to her left hip or back, the Full Commission need not adjudicate whether the applicable statute of limitations bars the claim in accordance with Ark. Code Ann. §11-9-702(Repl. 2012). The Full Commission respectfully dismisses the claim that the claimant sustained a compensable injury to her left hip or back on October 20, 2017.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

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 the claimant did not prove by a preponderance of the evidence that she sustained a compensable injury to her left hip or back.

The claimant sustained injuries to her right leg, upper right thigh, right hip, low back, and left hip while performing employment services on October 20, 2017. The claimant testified that the accident happened in the following manner:

Q And did you suffer a fall and injuries on that date, October 20, 2017?

A Yes, sir.

Q Tell the Court what happened.

A It was about 4:20 in the afternoon, and we close at 4:30. I left to go to the restroom before we closed our office. I got about midways to the restroom, and as I rounded a corner, my right foot slipped and I fell on my left knee and my palm (indicating), caught myself. But when I fell, somehow, my body flipped in the air and landed going the opposite way --

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 claimant was injured in a specific incident on October 20, 2017 during the course and scope of her employment. The claimant testified that she was walking to the restroom when she fell. The claimant sought and received medical treatment for the low back injury in the form of lumbar epidural steroid injections.

Additionally, there is medical evidence supported by objective findings of the injury in the form of a facet arthropathy at the L2-S1 level and minimal subluxation at the L4-5 level as shown on an x-ray taken on December 19, 2018.

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 Courts have held in several cases that an increase in symptoms following a work-related accident is sufficient proof to establish compensability. In *Parker v. Atlantic Research Corp.*, 87 Ark. App. 145, 189 S.W.3d 449 (2004), the Court of Appeals reversed the Commission's denial of benefits finding that job-related activity which resulted in an increase in symptoms of a pre-existing degenerative condition was sufficient to establish a compensable injury. The *Parker* case involved a non-specific injury where the claimant had to establish the major cause of her symptoms was the job-related activity. The Court specifically held that the increased symptoms alone were sufficient to meet that high standard. In the present claim, the claimant sustained a specific incident injury which only requires her to establish a causal connection between the injury and her symptoms. Clearly, the same factors that went to establishing a higher standard can be used to satisfy the standard in the present claim.

The evidence preponderates that the claimant's low back condition worsened after her workplace accident. Prior to her workplace accident, the claimant was not experiencing low back pain. After the accident, the claimant began experiencing significant pain in her low back with radicular pain and parathesias in her left hip and leg. As in *Parker*, this increase in pain is sufficient to establish compensability in this matter.

Based on the aforementioned, I find that the claimant proved by a preponderance of the evidence that she sustained a compensable injury to her low back and is entitled to workers' compensation benefits.

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

M. SCOTT WILLHITE, Commissioner