

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G905704

TANESIA ROSS-PERKINS, EMPLOYEE CLAIMANT

SODEXO, INC., EMPLOYER RESPONDENT

XL INSURANCE AMERICA/
GALLAGHER BASSETT SERVICES, INC.
INSURANCE CARRIER/TPA RESPONDENT

OPINION FILED MAY 4, 2021

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

Claimant appeared *pro se*.

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

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed December 31, 2020. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee relationship existed at all times pertinent hereto, including April 1, 2019, when Claimant sustained a compensable injury to her left knee and right ankle.

3. Respondents accepted the claim as a medical only claim.
4. Claimant earned an average weekly wage of \$200.61, which would entitle her to weekly compensation benefits of \$134.00 for temporary total disability benefits and \$134.00 for permanent partial disability benefits.
5. Claimant stipulates to the authenticity of all medical records and/or bills.
6. The Claimant has failed to prove, by a preponderance of the evidence, that she suffered a compensable work-related injury to her back on April 1, 2019.
7. The Claimant has failed to prove that she is entitled to temporary total disability benefits and/or additional medical treatment.
8. The Claimant has failed to prove that she is entitled to an attorney's fee herein.
9. All other issues, including entitlement to permanent partial and total disability payments, are reserved.

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

Therefore, we affirm and adopt the December 31, 2020 decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

CHRISTOPHER L. PALMER, Commissioner

Commissioner Willhite concurs and dissents.

CONCURRING AND DISSENTING OPINION

After my *de novo* review of the entire record, I concur in part but must respectfully dissent in part from the majority opinion. I concur with the majority's finding that the claimant failed to prove that she is entitled to temporary total disability benefits and an attorney's fee on those benefits. However, I must dissent from the majority opinion finding that the claimant failed to prove by a preponderance of the evidence that she suffered a compensable work-related injury to her back on April 1, 2019.

Factual and Medical Background

The claimant, now 39 years old, worked for the respondent-employer as a food service worker. The claimant testified that on April 1, 2019, her workplace accident occurred in the following manner:

Q Okay. So tell me what happened on April 1st, 2019[.]

A I was cutting some fruit for the salad bar and my partner was on lunch break and somebody came and told me that I needed something on the salad bar; so I tried to hurry up and finish my fruit, and I went into the cooler and got me a shotgun pan of cheese, milk, shotgun pan of lettuce and the big bucket of cheese; so I could put in the pan and go take it out to my station and I'm rushing out 'cause I'm kind of behind, because I finished my fruit, before I did that, and I slipped on a cantaloupe peel [sic] with my right ankle and I landed on my left knee, still holding the two things that I had, the shot gun pan and the cheese. ...

Q Okay. So I'm going to back up just a little bit here. You're walking out of the cooler, is that correct?

A Yes, I was kind of rushing.

Q Okay. And your right foot steps on a cantaloupe peel [sic]?

A Yes, ma'am.

Q And you slipped, falling on your left knee, is that correct?

A Yes.

Q Did you fall all the way to the grounds [sic] then?

A No.

Q Okay.

A My knee was on the ground and kind of steadying myself, because we got the sink over here and some – like a shelf, where we cut up our stuff over here; so I'm kind of trying to break my fall; so I wouldn't fall all the way to the ground, but I did land on my left knee and slipped with my right ankle.

...

Q Okay. Tell me how you stopped[.]

A On my knee.

Q Okay. And how did your – well, tell me all the body parts that you injured in that fall?

A My left ankle, left knee, my right ankle, and it kind of hurt my back some too, because I was breaking my fall, so I wouldn't fall all the way to the ground.

Q Okay. So by using your arms outstretched, you had your left arm on what?

A The table where we cut our stuff up at.

Q Okay. And your right arm on the sink, is that correct?

...

A Yes.

Q Okay. And it jarred your back, is that correct?

A Yes.

The claimant testified that she was first seen at St. Bernard's on the day of the accident. However, medical records from this visit were not contained within the record.

On April 3, 2019, the claimant presented to the Emergency Department at NEA Baptist Hospital with the chief complaints of left knee pain, right ankle pain, and back pain. X-rays of the claimant's right ankle and left knee showed no fracture or malalignment. The claimant was prescribed Flexeril and Voltaren and given instructions for follow-up with her primary care physician.

The claimant was next seen by Billie Barnes-Willis, APRN, on April 5, 2019. X-rays of the claimant's thoracic spine were taken. These x-rays were normal.

The claimant again presented to the NEA Baptist Hospital Emergency Department on April 8, 2019 with complaints of acute bilateral back pain without sciatica. X-rays of the lumbar spine showed no acute fracture, dislocation or malalignment.

The claimant underwent lumbar and thoracic spine MRIs on April 15, 2019 which revealed the following:

[Lumbar Spine:]

FINDINGS:

At L1-2 the intervertebral disk space is normal. There is no disk herniation or bulge. There is no central stenosis or foraminal narrowing.

At L2-3 the intervertebral disk space is normal. There is no disk herniation or bulge. There is no central stenosis or foraminal narrowing.

At L3-4 the intervertebral disk space is normal. There is no disk herniation or bulge. There is no central stenosis or foraminal narrowing.

At L4-5 there is a left foraminal herniation causing moderate narrowing of the left neural foramen.

At L5-S1 the intervertebral disk space is normal. There is no disk herniation or bulge. There is no central stenosis or foraminal narrowing.

Vertebral body heights and alignment are normal. There is no bone marrow signal abnormalities. The conus medullaris and surrounding soft tissue structures are normal.

IMPRESSION:

At L4-5 there is a left foraminal herniation causing moderate narrowing of the left neural foramen.

[Thoracic Spine:]

FINDINGS:

At C7-T1 the intervertebral disk space is normal. There is no disk herniation or bulge. There is no central stenosis or foraminal narrowing.

At T1-2 the intervertebral disk space is normal. There is no disk herniation or bulge. There is no central stenosis or foraminal narrowing.

At T2-3 the intervertebral disk space is normal. There is no disk herniation or bulge. There is no central stenosis or foraminal narrowing.

At T3-4 the intervertebral disk space is normal. There is no disk herniation or bulge. There is no central stenosis or foraminal narrowing.

At T4-5 there is posterior bulging of the intervertebral disk causing impingement of the anterior thecal space. There is no foraminal narrowing.

At T5-6 there is a right foraminal herniation causing moderate narrowing of the right neural foramen.

At T6-7 there is a left subarticular/foraminal herniation causing impingement of the spinal cord and moderate narrowing of the left neural foramen.

At T7-8 there is posterior bulging of the intervertebral disk causing impingement of the anterior thecal space. There is no foraminal narrowing.

At T8-9 there is posterior bulging of the intervertebral disk causing impingement of the anterior thecal space. There is no foraminal narrowing.

At T9-10 the intervertebral disk space is normal. There is no disk herniation or bulge. There is no central stenosis or foraminal narrowing.

At T10-11 there is posterior bulging of the intervertebral disk causing impingement of the anterior thecal space. There is no foraminal narrowing.

At T11-12 there is posterior bulging of the intervertebral disk causing impingement of the anterior thecal space. There is no foraminal narrowing.

Vertebral body heights and alignment are normal. There are no bone marrow signal

abnormalities. The spinal cord demonstrates normal signal intensities. There is no abnormal widening of the spinal cord. Surrounding soft tissue structures are unremarkable.

IMPRESSION:

1. At T4-5 there is a posterior bulging of the intervertebral disk causing impingement of the anterior thecal space. There is no foraminal narrowing.
2. At T5-6 there is a right foraminal herniation causing moderate narrowing of the right neural foramen.
3. At T6-7 there is a left subarticular/foraminal herniation causing impingement of the spinal cord and moderate narrowing of the left neural foramen.
4. At T7-8 there is posterior bulging of the intervertebral disk causing impingement of the anterior thecal space. There is no foraminal narrowing.
5. At T8-9 there is posterior bulging of the intervertebral disk causing impingement of the anterior thecal space. There is no foraminal narrowing.
6. At T10-11 there is posterior bulging of the intervertebral disk causing impingement of the anterior thecal space. There is no foraminal narrowing.
7. At T11-12 there is posterior bulging of the intervertebral disk causing impingement of the anterior thecal space. There is no foraminal narrowing.

The claimant was referred to a neurologist, Dr. Eric Akin. Dr.

Akin determined that surgical intervention was not necessary and recommended the claimant undergo physical therapy to treat the L4-5 protrusion and the small bulges in the thoracic spine.

Dr. Ryan Fitzgerald performed a radiology review at the behest of the respondents and opined the following:

In summary, MR imaging from 4/15/2019 reveals multi-level disc degeneration and chronic lumbar facet arthrosis. No findings of an acute injury are present either involving the vertebral column, intervertebral discs, or adjacent soft tissues. Multi-focality of disc degeneration is further evident [sic] of a chronic degenerative process rather than an acute process.

Opinion

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).

A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or

infirmary 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 him. *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. An aggravation is a new injury with an independent cause and, therefore, must meet the requirements for a compensable injury. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000); *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998).

The evidence preponderates that the claimant's thoracic and lumbar spine injuries satisfy the requirements of compensability. The claimant's injury was an accidental injury sustained while she was performing employment services. The claimant testified that she sustained an injury at work on April 1, 2019 when she slipped on a cantaloupe peel and fell.

Also, the injury was an internal or external physical injury that is supported by objective findings. Thoracic spine and lumbar spine MRIs taken on April 15, 2019, revealed disc herniations at L4-5, T5-6, and T6-7 and disc bulging at T4-5, T7-8, T8-9, T10-11, and T11-12.

In addition, the claimant's thoracic and lumbar spine injuries required medical treatment in the form of prescription medication and physical therapy.

Further, the injury arose out of and in the course of employment. The claimant sought medical treatment for back pain on the same days as her workplace accident. Although the claimant suffered from some degenerative disc conditions, they were not limiting her ability to perform her job duties until after the workplace accident. The claimant testified that her back pain prior to the accident was not as bad as it was after the accident. The claimant testified further that she had not sought medical treatment for back pain prior to the work accident. Clearly, in this matter, the claimant's work accident aggravated his underlying thoracic and lumbar spine problems.

I am not unmindful of Dr. Fitzgerald's opinion that the claimant suffered from a chronic degenerative process rather than an acute process. However, I assess little weight to this opinion as it relates to determining compensability. As indicated above, a degenerative condition can be compensable if aggravated by a work accident. See *Murphree, supra*.

Therefore, based on the aforementioned, I find that the claimant has established by a preponderance of the evidence that she sustained compensable thoracic and lumbar spine injuries.

For the foregoing reasons, I concur in part and dissent in part from the majority opinion.

M. Scott Willhite, Commissioner