

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**AWCC FILE No H200936**

**MELVIN THOMPSON, EMPLOYEE**

**CLAIMANT**

**CITY OF HELENA/WEST HELENA, EMPLOYER**

**RESPONDENT**

**AR MUNICIPAL LEAGUE-WCT, TPA**

**RESPONDENT**

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**OPINION FILED 10 OCTOBER 2023**

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Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 20 April 2023 in Helena/West Helena, Phillips County, Arkansas.

Mr. Kenneth A. Olsen, Attorney-at-Law of Bryant, Arkansas, appeared for the claimant.

Ms. Mary K. Edwards, Attorney-at-Law of North Little Rock, Arkansas, appeared for the respondents.

**I. STATEMENT OF THE CASE**

The above-captioned case was heard on 20 April 2023 in Helena/West Helena, Arkansas, after the parties participated in a prehearing telephone conference on 17 January 2023. A Prehearing Order, admitted to the record without objection as "Commission's Exhibit No 1", was entered on 18 January 2023. The Order stated that the ISSUES TO BE LITIGATED included compensability; entitlement to medical and indemnity benefits; controversy; and attorney's fees. All other ISSUES were reserved.

The Prehearing Order set forth the following STIPULATIONS:

1. The AWCC has jurisdiction over this claim.
2. An employee/employer/carrier relationship existed between the parties on 11 January 2022 when the claimant sustained a back injury.

The claimant was the sole WITNESS at the hearing.

The parties' CONTENTIONS, as set forth in their prehearing questionnaire responses, were incorporated by reference into the Prehearing Order and were listed as follows:

The claimant CONTENTS he is entitled to medical and indemnity benefits and attorney's fees.

The respondents CONTEND that the claimant sustained an injury on 11 January 2022 while working for the City of Helena/West Helena. His claim was accepted and benefits were paid accordingly. Claimant, however, reinjured his back in a motor vehicle accident on 16 January 2022, and that injury was not work-related. They further contend that any continued problems are or were related to the motor vehicle accident and not the 11 January 2022 work incident. The respondents reserved the right to amend their responses or pleadings.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the record as a whole and having heard testimony from the witness, observing his demeanor, I make the following findings of fact and conclusions of law under Ark. Code Ann. § 11-9-704:

1. The AWCC has jurisdiction over this claim.
2. The claimant failed to establish, by a preponderance of the evidence, that he is entitled to any additional benefits or medical treatment.
3. The claimant, accordingly, failed to establish that he is entitled to any attorney's fee.

## **III. HEARING TESTIMONY and MEDICAL EVIDENCE**

### *A. Claimant on Direct-Examination*

Melvin Thompson is a fifty-five (55) year old male who was working for the City of Helena/West Helena in January of 2022. He testified that on January 11<sup>th</sup>, the robotic arm of the city's garbage truck was not working properly, so he and others were dumping residential garbage containers by hand. [TR at 12.] He offered that he hurt his back

struggling with one particularly heavy container. Mr. Thompson said, “the next day, I couldn’t get up out of the bed, I was in so much pain. So I called my supervisor at 5:30, 6:00 [in the morning], and they instructed me to go to [Helena Regional Medical Center (HRMC)].” [TR at 13.] The claimant said that the hospital performed various imaging. [TR at 14.]

Mr. Thompson stated that this was not his first back injury. He worked in construction most of his life and specifically had back trouble in 2014. Past procedures performed included “epidurals and block shots” and rhizotomies, but he denied any “invasive back surgery.” [TR at 15.] Multiple MRIs were performed over the years, and he was diagnosed with disc bulge as far back as 2014. More disc bulges were seen via MRI in 2017. [TR at 16.]

He experienced some muscle spasms in 2018 and went for another MRI in 2020 when bulging discs were seen again, along with an annular fissure. [TR at 17.] He stated that he did not return to work after the 11 January 2022 incident. At the end of March, Mr. Thompson saw a provider in Memphis who recommended physical therapy for his back pain. [TR at 18.] A 2022 MRI revealed an additional disc bulge. He associated that bulge with new pain, including numbness and tingling. [TR at 19.]

Within a week of his reported work injury, Mr. Thompson was in a motor vehicle accident, when “a vehicle shot past me and cut me off, hit my front bumper.” [TR at 20.] He declined ambulance transportation and immediate medical treatment after the accident. [TR at 21.]

According to the claimant, he did not complete physical therapy because coverage was denied. That was around the time that he learned his claim was being denied going forward. [TR at 22.] Mr. Thompson testified that he already received some temporary disability benefits on the claim and that those started the day he reported an injury. Benefits were paid from January into March. [TR at 23.]

The claimant testified that he has not been able to return to work since the 11 January incident and he claimed that neither Dr. Lovell [the provider in Memphis] nor Dr. Michel [his PCP] released him to return to work. [TR at 24.] Mr. Thompson said that Medicaid covers his treatment with Dr. Michel when he does not have other insurance coverage. The claimant stated that he continues seeing Dr. Michel for back pain, muscle spasms, and other medications. [TR at 25.] He denied taking medication for his back prior to the 11 January 2022 incident. [TR at 26.] He also described his back as “good” for the seven to eight years prior to that date. When asked, “How is your back as we sit here today?” his response was the same—“good.” [TR at 27.] He could not remember the last time he took Gabapentin for muscle spasms.

Mr. Thompson concluded his direct-examination saying that he felt he could go back to work, that he did not need additional medical treatment, that he did not need a referral to a specialist, and that his current work status is without restrictions. [TR at 28.]

*B. Claimant on Cross-Examination by Ms. Edwards*

The claimant stated that he was discharged home from HRMC after imaging studies and being assessed with lumbar and cervical sprains. [TR at 29.] He then followed up with his PCP Dr. Michel, whom he has seen for seven (7) or eight (8) years. [TR at 30.]

Mr. Thompson denied any injury in the car accident a few days after his work incident and denied seeking damages for injuries in the lawsuit he filed subsequent to that accident. When asked, “You didn’t claim any sort of back injury in that, correct?” he answered, “Correct.” *Id.* Reviewing the lawsuit’s complaint, he acknowledged that chest pain, rib pain, and back pain were listed among the sustained injuries. [TR at 31.] Somewhat confusingly, he stated that the complaint *was* accurate but that “they put the back pain down wrong.” [TR at 32.] The claimant also acknowledged that he recently settled the lawsuit.

Mr. Thompson confirmed that he had not returned to work since the date of the incident. He acknowledged HRMC authorized his return to work. When asked, “But you didn’t want to go back to work, correct?” he answered, “I didn’t. They wouldn’t let me.” [TR at 34.] He further acknowledged that Dr. Michel authorized his return to work and that Dr. Lovell eventually returned him to work, also. The claimant confirmed again, though, that he never returned to work after 11 January 2022.

The claimant acknowledged his past workers’ compensation claims for back injuries and that Dr. Michel prescribed him medication over the years for his back symptoms. [TR at 35.] Mr. Thompson then testified about some of his past back issues and treatment history, including an imaging note from 2014 stating “degenerative findings normal for age.” [TR at 36-40.] In a 24 November 2015 note the same physician reported, “he is not a surgical candidate” and “he wants to be off work, but explained that his lower-back pain does not require him to be permanently off work.” The claimant said he was aware of that report. [TR at 41.] His cross-examination concluded with confirmation that another provider also authorized his return to work without restrictions in January of 2023. [TR at 42.]

*D. Claimant on Additional Examination*

On redirect examination, the claimant stated that he did not tell Dr. Lovell about his auto accident when he saw him in March of 2022. He also stated that an attorney drafted and filed his personal injury lawsuit without his review. [TR at 43.]

Before closing the record, the respondents’ counsel stated that the claim was denied after they learned of Mr. Thompson’s auto accident, but she made clear that they were not seeking repayment for any of the benefits already paid to Mr. Thompson or on his behalf.

*E. Medical Evidence*

An extensive set of medical records was offered and admitted to the record as “Joint Exhibit No 1.” Most of those records, 124 of the 166 pages, related to the claimant’s various

office visits and treatments for back problems pre-dating the 11 January 2022 injury. Consistent with his testimony around a history of back problems, the records reflect ongoing complaints of pain and imaging reports showing various levels of spinal disc derangement.

Specific to this claim, Mr. Thompson was seen at HRMC a little after 2:00 in the afternoon of 12 January 2022, where he reported pain in his back and neck. See J. Ex. № 1 at 125-132. X-Rays were ordered and IM Ketorolac and PO Cyclobenzaprine were administered. The imaging showed no acute abnormalities. According to his discharge summary, he was diagnosed with a cervical and lumbar sprains, prescribed 12 tablets each of Skelaxin and Ultracet, and given a Return to Work form. The summary listed his problem as ongoing. His work form initially authorized a return two (2) days later,<sup>1</sup> but that form was revised to authorize his return on 17 January 2022.<sup>2</sup>

The claimant then presented to Dr. Michel at the Lee County Cooperative Clinic on 14 January 2022. *Id.* at 133-136. He was noted without any acute distress and without any outward signs of pain. He received refills for several medications not related to his back complaints and does not appear to have received any prescriptions or treatments related to his back pain. Still, he was given a note excusing him from work through the end of the month.

Mr. Thompson's next clinic presentation was on 21 February 2022. *Id.* at 137-138. He reported continuing pain and sought another prescription refill not related to his workplace injury. An MRI was ordered. The cervical imaging showed some disc bulge and hypertrophy. *Id.* at 139-140. The lumbar spine imaging was compared to a 25 March 2020 study. *Id.* at 141-142. Disc desiccation and bulge were noted as unchanged, with an overall impression

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<sup>1</sup> Which a review of the calendar shows would have fallen on a Friday.

<sup>2</sup> 17 January 2022 would have been the Monday following his visit.

stating, “Disc desiccation and disc bulge from L2-L3 through L5-S1 unchanged. No significant spinal canal stenosis is noted with mild bilateral neural foraminal stenosis at L4-L5.” *Id.*

The MRI results were discussed at a follow-up clinic visit on 7 March 2022. *Id.* at 143-144. The HPI in the visit note stated, “This is the case of a 54 Y/O Black male with history of chronic pain and involvement in motor vehicle accident. Presented to discuss MRI report of the cervical spine.” An osteoporosis screening was ordered, and that scan resulted normal bone density findings on 11 March 2022. *Id.* at 145.

Mr. Thompson returned to the clinic again on 16 March 2022. *Id.* at 146-147. He was referred to UAMS for evaluation, noting “chronic neck pain and lumbar spine pain with muscle spasm long standing and is status post recently of a MVA... MRI revealed degenerative cervical and lumbar disc disease.” *Id.*

The claimant then presented to the Semmes-Murphey Clinic in Memphis, Tennessee, on 31 March 2022. *Id.* at 148-152. According to the note, he was there “at the request of worker’s compensation.” Reviewing the imaging from 2017, 2020, and 2022, the clinic noted “there does appear to be a new disc bulge on the right at L4-5. Otherwise the study is somewhat unremarkable, other than some degenerative changes.” He was prescribed Skelaxin and Gabapentin, with light-duty restrictions and no commercial driving, and physical therapy was ordered. The Return to Work note authorized his return that same day.

The claimant presented again to the Lee County clinic the following day, 1 April 2022, complaining that he could not get his prescriptions. *Id.* at 153-155. The clinic note represents that he reported a PT recommendation and “no return to work until further evaluation and completion of physical therapy.” Mr. Thompson was directed to Fenter Physical Therapy for treatment.

Additional provider notes appear from the Lee County Cooperative Clinic appear in the record from pages 156 to 166 of Joint Exhibit № 1. Mr. Thompson reported to the clinic

on 18 May 2022 that the workers' compensation carrier was no longer covering the cost of Gabapentin. *Id.* at 161.

#### IV. ADJUDICATION

The stipulated facts are outlined above. It is settled that the Commission, with the benefit of being in the presence of the witness and observing his or her demeanor, determines a witness' credibility and the appropriate weight to accord their statements. See *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 448, 990 S.W.2d 522 (1999).

*A. The Claimant Failed to Prove, by a Preponderance of the Evidence, that he is Entitled to Any Additional Benefits.*

Under Arkansas' Workers' Compensation laws, a worker has the burden of proving, by a preponderance of the evidence, that he sustained a compensable injury as the result of a workplace incident. Ark. Code Ann. § 11-9-102(4)(E)(i). A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). Objective medical findings are those findings that cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i). Causation does not need to be established by objective findings when the objective medical evidence establishes that an injury exists and other nonmedical evidence shows that it is more likely than not that the injury was caused by an incident in the workplace. *Bean v. Reynolds Consumer Prods.*, 2022 Ark. App 276, 646 S.W.3d 655, 2022 Ark. App. LEXIS 276, citing *Wal-Mart Stores, Inc. v. VanWagner*, *supra*.

Arkansas law requires an employer to promptly provide for medical treatment and surgical services that are reasonably necessary and related to injuries sustained by an employee. Ark. Code Ann. § 11-9-508(a). A claimant must prove, by a preponderance of the evidence, that medical treatment is reasonable and necessary. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.2d 153 (2003). Reasonable and necessary medical services

may include those necessary to, among other things, reduce or alleviate symptoms resulting from the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 953, 1995 Ark. App. LEXIS 589.

The claimant failed to meet his burden on the claim that he is entitled to any beyond what he already received. Mr. Thompson does not deny a significant history of back problems. The record shows that he called in early in the morning to report an injury after lifting a trash container the day before. He presented to the emergency later that afternoon and was found to have no acute abnormality on imaging and no appreciable change compared against available imaging from 2017. The emergency department providers ordered some pain and anti-inflammatory medications and authorized a return to work in a few days (with an original return date for that Friday changed to the following Monday). His problems were noted on the discharge summary as ongoing, and he was to return to work without any restrictions.

Mr. Thompson then followed up with his PCP who extended his off-work status for an additional two (2) weeks without stating why he was extending that status and without prescribing any treatment or medication for the claimant's back. Two (2) days after that visit, the claimant experienced a motor vehicle accident (MVA).

Despite the expiration of his off-duty status, Mr. Thompson failed to return to work. There is no record of any attempt around the time of his intended return to work to seek treatment, an extension of his off-work status, or some level of work restrictions to support any ongoing healing efforts. Five (5) weeks after last presenting to his PCP's clinic, the claimant returned with more complaints of chronic pain *and* without reporting being involved in an MVA just days after his last visit. Eventual imaging studies revealed findings consistent with past studies and possibly an additional bulge at one disc area.

Mr. Thompson's chronic pain, disc problems, and degenerative findings are noted throughout the medical records. Additionally, he caused a civil complaint to be filed subsequent to that MVA where he alleged injuries to, among other things, his chest, ribs, and back which required medical treatment and which would continue to require the same. The claimant can point to no medical evidence directly relating any objective finding to the 11 January work incident, and he certainly cannot do so to the exclusion of the involvement of his days-later MVA. And the record lacks any relevant non-medical evidence that preponderates a finding that any ongoing back troubles are or were caused by the workplace incident claimed on 11 January 2022.

On this record the claimant simply cannot prove, by a preponderance of the evidence, that he suffered a compensable injury that entitled him to benefits and/or treatment beyond what the respondents already provided.

*B. Attorney's Fee*

Consistent with the above, the claimant fails to establish that he is entitled to an attorney's fee.

**V. ORDER**

Consistent with the Findings of Fact and Conclusions of Law set forth above, this claim is DENIED AND DISMISSED.

**SO ORDERED.**

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JAYO. HOWE  
ADMINISTRATIVE LAW JUDGE