

## **NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H303020

CASEY THOMPSON, EMPLOYEE	CLAIMANT
LOCOMOTIVE SERVICE, INC., EMPLOYER	RESPONDENT
BERKSHIRE HATHAWAY HOMESTATE, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED MARCH 19, 2025

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

Claimant represented by the HONORABLE MICHAEL L. ELLIG, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE ZACHARY F. RYBURN, 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 September 27, 2024. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on June 20, 2024, and contained in a pre-hearing order filed that same date are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury on February 26, 2023.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's September 27, 2024 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 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.

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SCOTTY DALE DOUTHIT, Chairman

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MICHAEL R. MAYTON, Commissioner

Commissioner Willhite concurs.

CONCURRING OPINION

After my *de novo* review of the entire record, I concur with the majority opinion finding that the Claimant failed to prove by a

preponderance of the evidence that he suffered a compensable injury on February 26, 2023.

To establish a compensable injury by a preponderance of the evidence the Claimant must prove: (1) an injury arising out of and in the course of employment; (2) that the injury caused internal or external 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(16), establishing the injury; and (4) that the injury was caused by a specific and identifiable time and place of occurrence. A compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability must be stated within a degree of medical certainty. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002).

The employer takes the employee as he finds him. *Conway Convalescent Center v. Murphree*, 266 Ark. 985, 585 S.W.2d 462 (Ark. App. 1979). 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). An increase in symptoms of a pre-existing degenerative condition is sufficient to establish a compensable injury. *Parker v. Atlantic Research Corp.*, 87 Ark. App. 145, 189 S.W.3d 449 (2004).

While the Claimant is credible, and was clearly involved in an accident on February 26, 2023, while at work, there is insufficient proof in the record that Claimant sustained objective injuries. Further, although Claimant experienced his cervical symptoms after the February 26, 2023 work accident, no physician in the record states that Claimant's symptoms are related to the incident.

For the foregoing reasons, I concur with the majority but write separately for the benefit of the Claimant.

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M. SCOTT WILLHITE, Commissioner