

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H200936

MELVIN THOMPSON,
EMPLOYEE

CLAIMANT

CITY OF HELENA WEST HELENA,
EMPLOYER

RESPONDENT

ARKANSAS MUNICIPAL LEAGUE WCT,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED APRIL 18, 2024

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

Claimant represented by the HONORABLE KENNETH A. OLSEN, Attorney at Law, Bryant, Arkansas.

Respondents represented by the HONORABLE MARY K. EDWARDS, Attorney at Law, North Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed October 10, 2023. The administrative law judge found that the claimant failed to prove he was entitled to additional benefits or medical treatment. After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained a compensable injury. The claimant proved that he was entitled to additional medical treatment and temporary total disability benefits.

I. HISTORY

Melvin James Thompson, now age 56, testified that he sustained a back injury in about 2014 while working for another employer. The record indicates that Mr. Thompson treated at Lee County Cooperative Clinic beginning in May 2014. The claimant complained of lower back pain. It was noted, "c/o MVA last AUG and re-injury of back on job but did not have insurance to get it checked out." An APRN's assessment in May 2014 included "Sciatica."

Dr. Harry Andre Michel's assessment in June 2014 included "Sprain and strain of lumbosacral (joint)(ligament)" and "Lumbago" Dr. Justin Seale's assessment in July 2014 was "1. Diffuse degenerative disc disease, worse at L2-3 with axial back pain. 2. Mild scoliosis." The claimant continued to periodically follow up with Dr. Michel for complaints of low back pain. Dr. Michel assessed "7. Spasm of muscle" in March and April 2015. Dr. Michel assessed "4. Spasm of muscle of lower back" on July 22, 2019. Dr. Michel assessed "3. Muscle spasm" on December 2, 2019.

The claimant testified that he became employed with the respondents, City of Helena/West Helena, in about 2021. The parties initially stipulated that "an employer/employee relationship existed on January 11, 2022, when the claimant sustained a back injury." The claimant testified on direct examination:

Q. Would you briefly say how and when you got hurt?

A. Yes. On January 11th, and we're on garbage detail, and we got to a resident, where the house was under instruction, construction, and I went to get the can and I couldn't move it. So another co-worker came to help with it, and we both couldn't pull it. They had like, you know, bricks in there and mud and drywall. So we both had to get it on the wheel and pull it to the – they have a front-loader with it, like a commercial dumpster that they have at the grocery stores, because the garbage truck arm didn't work, the robotic arm. So we had to do it manually. So we got in front of the big commercial dumpster, and we tried to lift it and we couldn't lift it....So we got ready to tilt it, and some of it started sliding out and he just walked off, and it tilted over and it had me bent over it....So the next day, I couldn't get out of bed, I was in so much pain. So I called my supervisor at 5:30, 6:00, and they instructed me to go to the hospital.

According to the record, the claimant was treated at Helena Regional Medical Center on January 12, 2022, at which time the diagnosis was "Sprain of ligaments of cervical spine, initial encounter; Sprain of ligaments of lumbar spine." It was noted, "Patient states: that he works for the city sanitation and he has been having to lift trash cans for the past 2 weeks. Reports that his back and neck is hurting." Dr. Shakeb Hashmi documented the following on January 12, 2022:

The patient presents with pain that is acute. The symptoms are located in the low back, left neck. Onset: The symptoms/episode began/occurred 2 day(s) ago, and became persistent just prior to arrival. The pain radiates down the patient's left lower extremity, to the right trapezius and right low back....The problem was sustained at work....The patient has not recently seen a physician....

Back: pain, that is moderate, ROM is painful, with rotation to the left, normal spinal alignment noted, no deformity, CVA tenderness, is absent, vertebral tenderness, is appreciated at

L3, L4, L5 and sacrum, muscle spasm, is appreciated in the right scapular area and right low back.

The impression from an x-ray of the claimant's lumbar spine taken January 12, 2022 was "No acute lumbar spine abnormality." Dr. Hashmi's diagnosis included "Sprain of ligaments of lumbar spine."

A WORK RELEASE FORM dated January 12, 2022 indicated that the claimant would be able to return to work on January 17, 2022. The claimant testified that he received temporary total disability benefits for the period beginning January 12, 2022.

The claimant followed up with Dr. Michel on January 14, 2022:
"THIS IS THE CASE OF A 54 Y/O BLK MALE WHO PRESENTED FOR A FOLLOW UP VISIT HERE TO THE LCCC TODAY 1-14-22 STATUS POST RECEIVING TREATMENT AT THE ER OF THE HELENA REGIONAL MED CENTER ON 1-12-22 FOR ACUTE NECK PAIN AND LOW LUMBAR SPINE PAIN WHICH BEGAN AFTER LIFTING HEAVY TRASH CONTAINER WHILE WORKING ON THE SIDE OF A SANITATION TRUCK ON 1=12-22." Dr. Michel's assessment included "Lumbar sprain, subsequent encounter."

A CERTIFICATE OF MEDICAL/DENTAL CONSULTATION dated January 14, 2022 indicated that the claimant would be able to return to work on February 1, 2022.

An ARKANSAS MOTOR VEHICLE CRASH REPORT indicated that the claimant was involved in a motor vehicle accident on January 16, 2022. The MEDICAL INFORMATION section of the ARKANSAS MOTOR VEHICLE CRASH REPORT appeared to indicate that the Injury Status was "No apparent injury." The following NARRATIVE was prepared:

On 01/17/2022 At approx. 5:04 PM I, Officer Dr. Jointer and Officer Henderson was patrolling in the area of Perry Street and Hwy 242. When we came in contact with a 2006 Audi. After making contact with the car and the driver Who was later identified as Melvin Thompson, Thompson stated, he was traveling West on Perry St. when a black vehicle cut him off the road. Mr. Thompson stated, he was in the right lane approaching a curve and the black car hit his left driver side and front bumper area. Which cause his car to spin to the right and hit a hill Thompson stated, his car was left spinning and hit the embankment of the hill for the second time. Thompson stated, after hitting the hill and the car came to a stop he was facing oncoming traffic back East bound on Perry St.

The claimant testified on direct examination:

Q. Now, just within a week of this injury at work, you had an auto accident?
A. Yes....
Q. And how did that happen?
A. I was traveling west on Perry Street, and a vehicle shot past me and cut me off, hit my front bumper....
Q. Did you seek medical treatment for any injuries occurring in that accident?
A. No.
Q. Was the condition of your lumbar spine and the symptoms from it any different following that accident than it was before?
A. No.
Q. Did you consider yourself to be injured in that accident?
A. No.

Q. Was your back condition aggravated in any way as a result of that motor vehicle accident?

A. No.

The claimant signed a Form AR-N, EMPLOYEE'S NOTICE OF INJURY, on January 19, 2022. The ACCIDENT INFORMATION section of the Form AR-N indicated that the Date of Accident was January 11, 2022 and that the employer was notified of same on January 12, 2022. The claimant reported on the Form AR-N that he injured his "Back" as the result of "Lifting can."

An MRI of the claimant's lumbar spine was taken on March 2, 2022 with the impression, "Disc desiccation and disc bulge from L2-L3 through L5-S1 is unchanged. No significant spinal canal stenosis is noted with mild bilateral neural foraminal stenosis at L4-L5."

The claimant treated at Lee County Cooperative Clinic on March 7, 2022: "Patient is here to discuss his MRI results. Also would like to discuss with Dr. Michel about him being in [an] MVA on 1/16/22." Dr. Michel assessed "1. Lumbago due to displacement of intervertebral disc."

The claimant testified that he received temporary total disability benefits through March 8, 2022.

Dr. LaVerne R. Lovell saw the claimant on March 31, 2022:

Mr. Melvin Thompson comes in today for evaluation and treatment of his neck and low back pain at the request of workman's compensation. He reports that on January 11, 2022 is when he was injured at work. The robotic arm on the

dump truck was out of order, and he and a couple of his crew mates were having to lift heavy trashcans into the front loader. He says that one particularly heavy can required 3 of them, and when they were about half way into lifting the trashcan, another person let go of their side, which kind of jolted him up on his toes. He reports that additionally that week they had been lifting up to 130 cans a day for at least a week. He says a couple of days after this particular incident, is when he started to notice neck and back pain. He has been treated with Skelaxin and tramadol, but has had no other formal treatment. He has been off of work since the incident. He continues to report pain in his neck, upper back, and lower back....He does admit to episodic episodes of low back pain starting in 2014....

Dr. Lovell gave the following impression: "Mr. Thompson has been having increased neck and lower back pain since his work incident in January. His new lumbar MRI does have a right side disc bulge that is new compared to his 2020 MRI. This does correlate with his thigh complaints of pins and needles." Dr. Lovell planned, "He has not had much conservative treatment, so we will order physical therapy 3 x a week for four weeks....We will put him on light duty with restrictions to include no commercial driving, and a 10 pound lifting restriction. We will follow up after the completion of his physical therapy."

Dr. Lovell signed a Work Status/Work Ability form on March 31, 2022 indicating that the Date of Injury was January 11, 2022, and that the diagnosis was "LBP/neck pain." The Return to Work Date was March 31, 2022 and the Work Status was "Restricted." There was a 10-pound lifting

limit with “No commercial driving.” Dr. Lovell checked a “Yes” box indicating, “Physical Therapy Required.”

Dr. Michel stated in part on April 1, 2022, “PLEASE [REFER] TO FENTER PHYSICAL THERAPY CENTER IN HELENA, ARKANSAS FOR PHYSICAL [THERAPY]” as recommended by Dr. Lovell.

The claimant testified on direct examination:

Q. Now, you saw Dr. LaVerne Lovell one time in March of 2022, correct?

A. Yes.

Q. And were you scheduled to come back and see him?

A. Yes.

Q. Were you able to make the appointment?

A. No.

Q. Why weren't you able to go back and see him?

A. I was referred to follow up with physical therapy, and I called them to set up the appointment and they told me that they have to follow up with workman's comp to see if they approve the treatment....

Q. Physical therapist?

A. Yes. If workman's comp will pay for the treatment and at that point, I believe, a week later, they said that my benefits had been canceled. So, you know, I won't be able to get my treatments.

Q. You heard us talking before the hearing that the claim was, initially, accepted and paid, is that correct?

A. Yeah, I was told that.

Q. And were you notified after that, that your claim was now being denied?

A. Yes.

On October 28, 2022, the claimant filed a COMPLAINT IN THE CIRCUIT COURT OF PHILLIPS COUNTY, ARKANSAS. The claimant

stated, among other things, that he suffered from “A. Chest Pain, Rib Pain and Back Pain” as a result of the January 16, 2022 motor vehicle accident.

The respondents’ attorney cross-examined the claimant:

Q. Now, on January 16th of 2022, you were involved in a car accident. Correct?

A. Yes.

Q. And I don’t want to necessarily get to the specifics of the car accident, but your testimony today is that you did not injure your back in that car accident. Is that correct?

A. Correct.

Q. Okay. However, you filed a lawsuit claiming that you sustained injuries in that car accident. Correct?

A. No....

Q. This was the Complaint that was filed by the attorney on your behalf in the car accident, and actually, if you’ll turn to page 17, paragraph 8. A. shows that you sustained chest pain, rib pain, and back pain....So you’re saying that’s not accurate?

A. It's accurate....

Q. So you did sustain back pain in that car accident?

A. No.

Q. No, you didn’t, but that’s what this paper says.

A. Yes.

Q. Okay.

A. Chest pain, they really put the back pain down wrong.

Q. Okay. So speaking of that lawsuit that dealt with the car accident, you actually, settled that recently, correct?

A. Yes.

A pre-hearing order was filed on January 18, 2023. The pre-hearing order indicated that the parties agreed to litigate the following issues:

1. According to claimant, compensability, entitlement to medical and indemnity benefits, controversion, and attorney’s fees. Respondents reserve all other issues and specifically reserve the right to file an amended Response to the Prehearing Questionnaire.

A hearing was held on April 20, 2023. An administrative law judge stated at that time, "The contentions of the claimant are that the claimant contends that he is entitled to medical indemnity benefits and attorney's fees....[T]he respondents contend that the claimant sustained an injury on January 11, 2022, while working for the City of Helena/West Helena. Respondents accepted the injury as compensable and starting paying related benefits; however, the claimant re-injured his back in a motor vehicle accident on January 16, 2022, and that injury is not work-related. Respondents contend that any continued problems claimant is currently experiencing or was at the time of the filing are related to that motor vehicle accident and not the workplace injury of January 11, 2022."

The claimant contended that he was "entitled to indemnity to a date yet to be determined." The respondents contended, "So originally, we did stipulate that there was a back injury on January 11, 2022; however, that's not entirely correct....The respondents initially accepted the back injury, but then, later amended a Form 2 filing and denied it in its entirety. So the issues read that they are compensability and indemnity benefits and medical benefits, and attorney's fees, and that's correct....Respondents contend that claimant did not sustain a back injury within the course and scope of his employment on January 11, 2022. Claimant injured his back in a motor vehicle accident on January 16, 2022, and this injury is not work-

related. Additionally, claimant has an extensive history of back problems. Respondents contend that any back complaints claimant is currently experiencing are related to the pre-existing issues and/or the motor vehicle accident and not the incident at work on January 11, 2022.”

An administrative law judge filed an opinion on October 10, 2023. The administrative law judge found that the claimant failed to prove he was entitled to “any additional benefits or medical treatment.” The administrative law judge therefore denied and 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 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 claimant has the burden of proving by a preponderance of the evidence that he 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).

An administrative law judge determined in the present matter, "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."

In workers' compensation cases, the Commission functions as the trier of fact. *Blevins v. Safeway Stores*, 25 Ark. App. 297, 757 S.W.2d 569 (1988). The determination of the credibility and weight to be given a witness's testimony is within the sole province of the Commission. *Murphy v. Forsgren, Inc.*, 99 Ark. App. 223, 258 S.W.3d 794 (2007). 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 it deems worthy of belief. *Farmers Co-op v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002). An administrative law judge's findings with regard to credibility are not binding on the Full Commission. *Roberts v. Leo Levi Hospital*, 8 Ark. App. 184, 649 S.W.2d 402 (1983). The Full Commission has the duty to adjudicate the case *de novo* and we are

not bound by the characterization of evidence adopted by an administrative law judge. *Tyson Foods, Inc. v. Watkins*, 37 Ark. App. 230, 792 S.W.2d 348 (1990).

In the present matter, the Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained a compensable injury. As we have discussed, the claimant testified that he became employed with the respondents, City of Helena/West Helena, in about 2021. The parties initially stipulated that the claimant “sustained a back injury” on January 11, 2022. The claimant testified that he was working on “garbage detail” for the respondents. The claimant testified that he injured his back while lifting a large trash receptacle. The claimant testified that “it tilted over and it had me bent over it....So the next day, I couldn’t get out of bed, I was in so much pain.” The claimant testified that the respondents directed him to treat at Helena Regional Medical Center, where the claimant was diagnosed with “Sprain of ligaments of lumbar spine” on January 12, 2022. Dr. Hashmi physically examined the claimant on January 12, 2022 and reported “muscle spasm” in the claimant’s right low back. Muscle spasm has been held to be an objective medical finding. *Smith v. County Market/Southeast Foods*, 73 Ark. App. 333, 44 S.W.3d 737 (2001). We recognize that the claimant had already been assessed with “Spasm of muscle” as early as 2015. However, there were no reports of

muscle spasm noted after December 2, 2019. The Full Commission finds that Dr. Hashmi's observation of muscle spasm on January 12, 2022 was causally related to the January 11, 2022 accidental injury and was not causally related to a prior injury or pre-existing condition.

The claimant in the present matter proved by a preponderance of the evidence that he sustained a "compensable injury" in accordance with Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2012) *et seq.* The claimant proved that he sustained an accidental injury causing physical harm to the body. The claimant proved that the injury arose out of and in the course of employment, required medical services, and resulted in disability. The claimant proved that the injury was caused by a specific incident and was identifiable by time and place of occurrence on or about January 11, 2022. The claimant also established a compensable injury by medical evidence supported by objective findings, namely, Dr. Hashmi's observation of muscle spasm on January 12, 2022. The claimant proved that this objective medical finding was causally related to the January 11, 2022 compensable injury and was not related to a prior injury or pre-existing condition.

B. Medical Treatment

The employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the

injury received by the employee. Ark. Code Ann. §11-9-508(a)(Repl. 2012). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2002). It is the Commission's duty to translate the evidence of record into findings of fact. *Gencorp Polymer Prods. v. Landers*, 36 Ark. App. 190, 820 S.W.2d 475 (1991). It is also within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

An administrative law judge found in the present matter, "2. The claimant failed to establish, by a preponderance of the evidence, that he is entitled to any additional benefits or medical treatment." The Full Commission does not affirm this finding. The claimant proved that he sustained a compensable injury on January 11, 2022. Dr. Hashmi diagnosed "Sprain of ligaments of lumbar spine" on January 12, 2022. The respondents initially accepted compensability of the claim and provided medical treatment. The claimant alleged that he was involved in a nonwork-related motor vehicle accident on January 16, 2022. The claimant

informed the Helena/West Helena Police Department that another car had struck his vehicle. The respondents assert that the claimant's back problems are causally related to the alleged January 16, 2022 motor vehicle accident instead of the January 11, 2022 compensable injury. Indeed, the claimant filed a COMPLAINT in Phillips County Circuit Court on October 28, 2022 and stated that he was suffering from "Back Pain" as the result of the January 16, 2022 alleged accident. This circumstance certainly diminishes the claimant's overall credibility. Nevertheless, the probative medical evidence before the Commission does not demonstrate that the claimant injured his back on January 16, 2022. Nor do the respondents expressly contend that the alleged January 16, 2022 accident was a "nonwork-related independent intervening cause" in accordance with Ark. Code Ann. §11-9-102(4)(F)(iii)(Repl. 2012).

The claimant in the present matter sustained a compensable lumbar sprain on January 11, 2022. The probative medical evidence does not demonstrate that the claimant re-injured his back on January 16, 2022. Dr. Lovell examined the claimant on March 31, 2022 and recommended physical therapy. Dr. Michel stated on April 1, 2022, "PLEASE [REFER] TO FENTER PHYSICAL THERAPY CENTER IN HELENA, ARKANSAS FOR PHYSICAL [THERAPY]" as recommended by Dr. Lovell. The Full Commission finds that the claimant proved a course of physical therapy, as

recommended by Dr. Lovell and Dr. Michel, was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012).

C. Temporary Disability

Finally, temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981).

“Healing period” means “that period for healing of an injury resulting from an accident.” Ark. Code Ann. §11-9-102(12)(Repl. 2012). The determination of when the healing period has ended is a question of fact for the Commission. *Carroll Gen. Hosp. v. Green*, 54 Ark. App. 102, 923 S.W.2d 878 (1996).

In the present matter, the claimant proved by a preponderance of the evidence that he sustained a compensable injury on January 11, 2022. Dr. Hashmi diagnosed “Sprain of ligaments of lumbar spine” on January 12, 2022. The claimant testified that he received temporary total disability benefits for the period beginning January 12, 2022 and continuing through March 8, 2022. Dr. Lovell examined the claimant on March 31, 2022 and released the claimant to restricted work. The evidence therefore demonstrates that the claimant was no longer incapacitated from earning wages after March 31, 2022. The claimant proved that he was entitled to

additional temporary total disability benefits beginning March 9, 2022 and continuing through March 31, 2022.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained a compensable injury on January 11, 2022. The claimant proved that physical therapy as recommended by Dr. Lovell and Dr. Michel was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The claimant proved that he was entitled to additional temporary total disability benefits beginning March 9, 2022 and continuing through March 31, 2022. The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Repl. 2012). For prevailing on appeal, the claimant's attorney is entitled to an additional 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 finding that the claimant has proven that he is entitled to additional medical treatment and temporary total disability benefits.

Ark. Code Ann. § 11-9-508(a) (Repl. 2012) requires an employer to provide an employee with medical and surgical treatment "as may be reasonably necessary in connection with the injury received by the employee." The claimant has the burden of proving by a preponderance of the evidence that the additional medical treatment is reasonable and necessary. *Nichols v. Omaha Sch. Dist.*, 2010 Ark. App. 194, 374 S.W.3d 148 (2010).

What constitutes reasonably necessary treatment is a question of fact for the Commission. *Gant v. First Step, Inc.*, 2023 Ark. App. 393, 675 S.W.3d 445 (2023). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, the Commission analyzes both the proposed procedure and the condition it sought to remedy. *Walker v. United Cerebral Palsy of Ark.*, 2013 Ark. App. 153, 426 S.W.3d 539 (2013).

It is within the Commission's province to weigh all the medical evidence to determine what is most credible and to determine its medical soundness and probative force. *Sheridan Sch. Dist. v. Wise*, 2021 Ark.

App. 459, 637 S.W.3d 280 (2021). In weighing the evidence, the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. *Id.* However, the Commission has the authority to accept or reject medical opinions. *Williams v. Ark. Dept. of Community Corrections*, 2016 Ark. App. 427, 502 S.W. 3d 530 (2016). Furthermore, it is the Commission's duty to use its experience and expertise in translating the testimony of medical experts into findings of fact and to draw inferences when testimony is open to more than a single interpretation. *Id.*

Here, the claimant has reported ongoing back problems since 2014 when he sustained two separate low back injuries on January 17 and June 6, 2014, for which he received “epidurals and block shots” as well as rhizotomies. (Hrng. Tr., Pp. 14, 15; Resp. Ex. 1, Pp. 1-2).

The claimant has received multiple MRIs over the years and was diagnosed with canal and foraminal stenosis and degenerative disc disease of L4-L5 on August 20, 2014, and had an epidural injection at Legacy Neurology in Little Rock on October 8, 2014. (Jt. Ex. 1, Pp. 17, 27).

A later MRI conducted on May 30, 2017, revealed a generalized disc bulge with mild ligamentum flavum/facet hypertrophy at L2-L3 and L4-L5 resulting in mild bilateral neural foraminal stenosis. (Jt. Ex. 1, P. 67). This diagnosis was confirmed with a third MRI on March 25, 2020. (Jt. Ex. 1, P. 113).

In November 2015, the claimant's primary care physician, Dr. Harry Michel, noted that the claimant "wants to be off work due to lower back pain that radiates into the lateral and posterior aspect of his right leg but explained that his lower back pain does not require him to be permanently off of work." (Jt. Ex. 1, Pp. 44-49).

When the claimant sustained his alleged injury on January 11, 2022, he sought treatment at Helena Regional Medical Center and was released to return to work on January 17, 2022. (Jt. Ex. 1, Pp. 125-132). Claimant then followed up with Dr. Michel on January 14, 2022, who diagnosed the claimant with a lumbar sprain and took him off of work until February 1, 2022, and prescribed Viagra. (Jt. Ex. 1, Pp. 133-136). Dr. Michel did not recommend any additional medical treatment. *Id.*

Shortly after his visit with Dr. Michel, the claimant was in a motor vehicle accident on January 16, 2022. The claimant returned to Dr. Michel to discuss this accident on March 7, 2022, and Dr. Michel explained the MRI on March 2, 2022, revealed bulging discs in the claimant's lumbar spine. (Jt. Ex. 1, Pp. 143,144).

The claimant was examined by Dr. LaVerne Lovell on March 31, 2022, at the request of the respondents. (Jt. Ex. 1, Pp. 148-152). Dr. Lovell recommended physical therapy and returned the claimant to work on

light duty. *Id.* At this juncture, the respondents denied further treatment and the claimant did not complete physical therapy.

At the hearing on April 20, 2023, the claimant described his back as being “good,” and stated that he could not recall the last time he took medication for his back. He testified he is capable of working at regular duty and does not need any medical treatment for his back. (Hrng. Tr., P. 27).

There is no evidence in the record to support the claimant’s petition for additional medical treatment or additional temporary disability benefits. The whole of the claimant’s medical records reflect that his low back pain is degenerative in nature and that he has been receiving treatment for these issues for ten years. In addition, the claimant was involved in a motor vehicle accident five (5) days after the accident in question. As a result of the motor vehicle accident, the claimant filed a civil lawsuit alleging back injuries.

It is clear the any back issues of which the claimant has complained are due to his degenerative condition or the motor vehicle accident which occurred on January 16, 2022, only five (5) days after the accident in question.

Accordingly, for the reasons stated above, I respectfully dissent.

MICHAEL R. MAYTON, Commissioner