BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC NOS. G503430, G902279, G902281 & G903969

BYRON D. WATKINS, EMPLOYEE	**CLAIMANT**
L.A. DARLING CO., LLC, EMPLOYER	**RESPONDENT NO. 1**
TRAVELERS INS. CO., CARRIER	**RESPONDENT NO. 1**
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	**RESPONDENT NO. 2**

OPINION FILED JUNE 25, 2021

Hearing before Chief Administrative Law Judge O. Milton Fine II on May 21, 2021, in Jonesboro, Craighead County, Arkansas.

Claimant *pro se*.

Respondents No. 1 represented by Mr. R. Scott Zuerker, Attorney at Law, Fort Smith, Arkansas.

Respondent No. 2 represented by Ms. Christy L. King, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On May 21, 2021, a hearing on the above-captioned claims was heard in Jonesboro, Arkansas. A prehearing conference took place on March 29, 2021. The Prehearing Order entered on March 30, 2021, pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

Stipulations

The parties discussed the stipulations set forth in Commission Exhibit 1. Following amendments at the hearing, they are the following, which I accept:

1. The Arkansas Workers' Compensation Commission has jurisdiction over these claims.
2. The employer/employee/carrier relationship existed between the parties on May 7, 2015, (G503430); on June 1, 2018, (G902279); June 4, 2018, (G902281); and March 4, 2019, (G903969).
3. The previous opinions from the Administrative Law Judge, filed on April 24, 2019, and from the Full Workers' Compensation Commission, filed on October 8, 2019, are binding on this proceeding under the Law of the Case Doctrine.
4. Respondents No. 1 have controverted Claims Nos. G902279, G902281, and G903969 in their entirety.
5. Claimant was transported to the emergency room in 2006, and was treated by a heart doctor for symptoms he now believes were attributable to his alleged back and neck injuries. He missed work and had leave from work as a result of the symptoms associated with his back and neck in 2006.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1. Following amendments at the hearing, the following were litigated:

1. Whether the statute of limitations bars AWCC Nos. G503430, G902279, G902281 and G903969.
2. Whether Claimant's alleged neck injury claim (G902279) is barred by the doctrines of *res judicata*, collateral estoppel and/or Law of the Case.
3. Whether Claimant sustained a compensable injury to his elbow (G503340).
4. Whether Claimant sustained a compensable injury to his neck (G902279).
5. Whether Claimant sustained a compensable injury to his back (G902281).
6. Whether Claimant sustained a compensable injury to his left hip and knee (G903969).
7. Whether Claimant is entitled to reasonable and necessary medical treatment of his alleged elbow, neck, back, left hip and left knee injuries, to include prescriptions and medical mileage reimbursement.
8. Whether Claimant is entitled to additional medical treatment of his compensable hand injury, to include prescriptions and medical mileage reimbursement.

Contentions

The respective contentions of the parties, following amendments at the hearing, read as follows:

Claimant:

1. Claimant contends that he sustained compensable injuries and is entitled to benefits pursuant thereto.

Respondents No. 1:

1. Respondents No. 1 contend the claimant did not sustain compensable injuries as that term is defined by Act 796 of 1993. With regard to Claimant's alleged left hip and knee injuries (G903969), Respondent No. 1 further contends that these are idiopathic. Respondents No. 1 raise the statute of limitations as a bar to benefits in AWCC Nos. G503340, G902279, G902281 and G903969.

Respondent No. 2:

1. The Trust Fund contends that the statute of limitations has run on AWCC Nos. G503340, G902279, G903969 and G902281 pursuant to Ark. Code Ann. §§ 11-9-702(b) & 11-9-713 (Repl. 2012), along with *Kirk v. Cent. State Mfg.*, 2018 Ark. App. 78, 540 S.W.3d 714.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the evidentiary record, and having had an opportunity to hear the testimony of the hearing witnesses and to observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over these claims.
2. The stipulations set out above are reasonable and are hereby accepted.

3. The motion by Respondent No. 2 to amend Issue No. 1 to address whether AWCC No. G902281 is barred by the statute of limitations is hereby granted.

4. The motion by Respondents to add an issue concerning whether Claimant's claim for an alleged neck injury (G902279) is barred by the doctrines of *res judicata*, collateral estoppel and/or Law of the Case is hereby granted.

5. The motion by Respondents No. 1 to amend their contentions to allege that Claimant's alleged left hip and knee injuries (G903969) are idiopathic, and that his alleged elbow injury (G503430) is barred by the statute of limitations, is hereby granted.

6. All of the points raised by Claimant in his June 15, 2021, post-hearing submission are meritless and are hereby overruled. The fifty-nine (59) pages of documents attached to his two (2)-page submission will not be admitted into evidence, but instead will be considered proffered.

7. Claimant has not proven by a preponderance of the evidence that he sustained a compensable elbow injury (G503430) by gradual onset.

8. Claimant has not proven by a preponderance of the evidence that he sustained a compensable elbow injury (G503430) by specific incident.

9. Because of Findings/Conclusions Nos. 7-8 *supra*, the issues regarding whether Claimant's claim for a compensable elbow injury (G503430) is barred by the statute of limitations and whether he is entitled to

reasonable and necessary medical treatment of his alleged elbow injury are moot and will not be addressed.

10. The issue concerning whether Claimant suffered a compensable neck injury claim (G902279) is barred by the doctrines of *res judicata*, collateral estoppel and the Law of the Case.

11. Because of Finding/Conclusion No. 10 *supra*, the issues of whether AWCC No. G902279 is barred by the statute of limitations, and whether Claimant sustained a compensable neck injury and is entitled to reasonable and necessary medical treatment therefor are moot and will not be addressed.

12. Claimant has not proven by a preponderance of the evidence that he sustained a compensable injury to his back by specific incident.

13. The evidence preponderates that Claimant's claim for initial benefits in connection with his alleged back injury, AWCC No. G902281, to the extent that it is for a gradual-onset injury, is barred by the statute of limitations set forth in Ark. Code Ann. § 11-9-702(a)(1) (Repl. 2012).

14. Because of Findings/Conclusions Nos. 12 and 13, *supra*, the issues of whether Claimant sustained a compensable back injury by gradual onset, and whether he is entitled to reasonable and necessary medical treatment of his alleged back injury are moot and will not be addressed.

15. Claimant has not proven by a preponderance of the evidence that he sustained a compensable injury to his left hip and knee by gradual onset.

16. Claimant has not proven by a preponderance of the evidence that he sustained a compensable injury to his left hip and knee by specific incident.

17. Because of Findings/Conclusions Nos. 15 and 16, *supra*, the issue of whether Claimant is entitled to reasonable and necessary medical treatment of his alleged left hip and knee injuries is moot and will not be addressed.

18. The evidence preponderates that Claimant's claim for additional medical benefits in connection with his compensable hand injury, AWCC No. G503430, is barred by the statute of limitations set forth in Ark. Code Ann. § 11-9-702(b)(1) (Repl. 2012).

19. Because of Finding/Conclusion No. 18, *supra*, the issue of whether Claimant is entitled to additional medical treatment of his compensable hand injury is moot and will not be addressed.

PRELIMINARY RULINGS

Amendment of Issues

During the preliminary portion of the hearing, when the contents of the Prehearing Order were being discussed, counsel for Respondent No. 2 moved to amend this issue, which concerns the statute of limitations, to include AWCC No. G902281. She explained that this claim was inadvertently left out of the issue because, *inter alia*, there are so many claim numbers involved in this proceeding; and she pointed out that in its contentions, her client has argued that G902281 is barred by the statute of

limitations. Respondents No. 1 joined in this request. However, Claimant objected to the proposed amendment.

Arkansas Code Annotated § 11-9-705(a)(1) (Repl. 2012) provides:

> In making an investigation or inquiry or conducting a hearing, the Workers' Compensation Commission shall not be bound by technical or statutory rules of evidence or by technical or statutory rules of procedure, except as provided by this chapter, but may make such investigation or inquiry, or conduct the hearing, in a manner that will best ascertain the rights of the parties.

As the Arkansas Court of Appeals wrote in *Sapp v. Tyson Foods*, 2010 Ark. App. 517, 2010 Ark. App. LEXIS 549, "elementary principles of fair play" apply in Commission proceedings. I find that such an amendment would not change the nature of what the parties reasonably expected to litigate–and did litigate–at the hearing. Claimant was already on notice that statute of limitations defenses were being raised—even concerning this particular claim. It does not violate the rules of fair play to amend this issue. Accordingly, Claimant's objection is respectfully denied. Issue No. 1 is hereby amended to include AWCC No. G902281.

Respondents at the hearing, over the objection of Claimant, also moved to amend the issues to add one concerning whether his claim for an alleged neck injury (G902279) is barred by the doctrines of *res judicata*, collateral estoppel and Law of the Case. The parties have already stipulated that the previous decision by Chief Administrative Law Judge Andrew Blood is binding on this proceeding under the Law of the Case Doctrine. There is no unfair surprise to Claimant. Thus, his objection is hereby overruled.

Amendment of Contentions

At the hearing, Respondents No. 1 moved to amend their contentions to assert that Claimant's alleged left knee and hip injuries (G903969) are idiopathic. Claimant objected.

In order to prove the occurrence of an injury caused by a specific incident or incidents identifiable by time and place of occurrence, a claimant must show, *inter alia*, that the injury occurred that arose out of and in the course of his employment. Because an idiopathic injury is not related to one's employment, it is generally not compensable unless conditions related to the employment contribute to the risk of injury or aggravate the injury. *Little Rock Conv. & Visitors Bur. v. Pack*, 60 Ark. App. 82, 959 S.W.2d 415 (1997). Because Claimant was already required here to prove that these alleged injuries arose out of and in the course of his employment at Respondent L.A. Darling (hereinafter "Darling"), he was on sufficient notice that this proposed contention does not unfairly surprise him. Accordingly, his objection is hereby overruled. The contention is hereby amended as stated above.

Respondents No. 1 also moved to amend their contentions to allege that Claimant's alleged elbow injury, part of AWCC No. G503430, is barred by the statute of limitations. Claimant objected. But based on the above analysis, the objection is hereby overruled as well.

Claimant's Post-Hearing Challenges

On June 15, 2021, Claimant filed with the Commission at two-page letter. Attached to that letter was sixty-one (61) pages of documents. Respondents have

objected to the admission of these documents. This would violate my instructions to the parties at the close of the hearing: "And except for the—the receipt of the briefs or submissions by the parties just on their arguments about why they should prevail in this matter within 30 days of today's date, the record is closed." Only the blue-backed post-hearing argument submissions were to be added to the record.

I note that the Arkansas Supreme Court held in *Mason v. Lauck*, 232 Ark. 891, 340 S.W.2d 575 (1960), that in order to submit new evidence, a party must show, among other things, that he was diligent in presenting this evidence. *See also Haygood v. Belcher*, 5 Ark. App. 127, 633 S.W.2d 391 (1982). I find that Claimant has not done this. Moreover, the belated offering of this evidence violates Ark. Code Ann. § 11-9-705(c)(1)(A) (Repl. 2012), which reads: "All . . . documentary evidence shall be presented to the designated representative at the initial hearing on the controverted claim . . . ." Furthermore, it abridges the prehearing order, which states: "Exhibits and the identity of witnesses must be exchanged at least seven (7) days prior to the hearing." Finally, I note that § 11-9-705(c)(1)(C)(i) provides: "Further hearing for the purpose of introducing additional evidence will be granted only at the discretion of the hearing officer or commission." For me to allow these documents into evidence at this juncture would constitute an abuse of that discretion. Therefore, Respondents' objections are sustained; the proffered documents will not be admitted into evidence.

As for Claimant's argument, many of the points that he raises relate to his misunderstanding of Respondent No. 2 and its role. Any issue concerning whether he

is permanently and totally disabled is reserved, along with all other issues not specifically addressed in this proceeding.

Regarding his other challenges, Claimant wrote: "I object to you [the undersigned administrative law judge] throwing Judge Andrew Blood's C form out on my neck. That is discrimination." This point simply does not make sense. The transcript of the March 15, 2019, hearing before Chief Administrative Law Judge Blood, which has been admitted herein as Joint Exhibit 1 (see *infra*) includes the Form AR-C filed on July 10, 2018, concerning Claimant's alleged neck injury—which was admitted into evidence in that hearing as Respondents' Exhibit 2. Moreover, the only objection that Respondents raised in the instant hearing to any documentary evidence was in regard to Claimant's stated intention at the end of the hearing to obtain and introduce documents concerning an alleged visit by him to the emergency room. However, that objection was withdrawn, and Claimant agreed not to attempt to submit any additional records, in lieu of Stipulation No. 5.

Claimant also wrote in his post-hearing correspondence: "You also would not allow me to change my mind when I wanted to object to the C form on my hands and neck. That is discrimination." As the record reflects, Respondents' Exhibit 5, the Form AR-C in question, was admitted into evidence after Claimant indicated that he did not object to its admission. After it was admitted, he sought to object. The objection was meritless; there is no need to revisit it. What should be pointed out, however, is that this is the same Form AR-C that is contained in Respondents' Exhibit 2 to the March 15, 2019, hearing, discussed above.

Another allegation by Claimant reads: "I object to how you allowed the statutes [presumably, of limitation] to run out on my case. You purposely prolonged everything until the statute ran out. That is discrimination." He has cited nothing in support of this argument, which is meritless on its face. This statement illustrates that the *pro se* claimant does not understand the concept of tolling.

Finally, Claimant wrote: "I object to going off the record. Everything that is said needs to be recorded and on record. There should be a record of all things that are stated because some of the things stated off record could be vital information for my case." Claimant did not preserve this argument, such as it is, by making a contemporaneous objection at the hearing. *See Curtis v. State*, 2015 Ark. App. 167, 457 S.W.3d 700. The record will reflect that neither he nor any of the other parties took exception to the Commission going off the record at various times and for various purposes during the hearing; nor did any party take issue with the accuracy of any description that the Commission made on the record of any off-the-record statements or activity.

In sum, all of the points raised by Claimant in his June 15, 2021, submission are devoid of merit and are hereby overruled.

CASE IN CHIEF

Summary of Evidence

The hearing witnesses were Claimant and Donna Graves, the Human Resources Administrator for Respondent Darling.

Along with the Prehearing Order discussed above, the exhibits admitted into evidence in this case were Claimant's Exhibit 1, a compilation[1] of his medical records, consisting of four hundred ninety-one (491) numbered pages; Respondents' Exhibit 1, another compilation of Claimant's medical records, consisting of one (1) index page and twenty-nine (29) numbered pages thereafter; Respondents' Exhibit 2, non-medical records, consisting of one (1) index page and six (6) numbered pages thereafter; Respondents' Exhibit 3, the transcript of the deposition[2] of Claimant taken October 29, 2018, consisting of seventy-three (73) numbered pages; Respondents' Exhibit 4, the transcript of the deposition of Claimant taken April 16, 2021, consisting of sixty-nine (69) numbered pages plus four (4) pages of exhibits; Respondents' Exhibit 5, the Form AR-C in AWCC No. G503430 filed on July 10, 2018, consisting of one (1) page; Joint Exhibit 1, the transcript of the hearing in AWCC No. G503430 conducted on March 15, 2019, consisting of fifty-three (53) numbered pages plus ninety-nine (99) pages of exhibits;[3] and Joint Exhibit 2, a signed hand-written stipulation reached by the parties at the hearing, consisting of one (1) page.

[1]This exhibit does not comply with the Prehearing Order, which states: "Medical records **must be arranged in chronological order (not grouped by provider)** and be paginated. **A comprehensive index must be included with each set of medical records submitted, and must contain separate entries for each provider and visit.**" (Emphasis added)

[2]Per Commission policy, this exhibit, along with Respondents' Exhibit 4 and Joint Exhibit 1, have been retained in the Commission's file.

[3]Respondents' Exhibit 4 to that transcript, Claimant's October 29, 2018, deposition transcript, was not attached to the transcript. But it has been admitted as Respondents' Exhibit 3 here. *See supra*.

In addition, I have blue-backed to the record the following: Claimant's post-hearing correspondence[4] filed with the Commission on June 15, 2021, consisting of two (2) pages; the response of Respondents No. 1 to Claimant's post-hearing correspondence, filed on June 21, 2021, consisting of six (6) numbered pages; the email response of Respondent No. 2 to Claimant's post-hearing correspondence, filed on June 21, 2021, consisting of two (2) pages; the post-hearing brief of Respondents No. 1 filed June 21, 2021, consisting of fifteen (15) numbered pages; and the post-hearing brief of Respondent No. 2 filed June 21, 2021, consisting of eleven (11) numbered pages.

Adjudication

Procedural History

An assessment of some of the issues at bar first requires a recounting of the procedural history of AWCC No. G503430. On March 15, 2019, the first hearing was held on this particular claim before Chief Administrative Law Judge Andrew Blood. The judge's April 24, 2019, opinion contains the following findings of fact and conclusions of law:

> 1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
> 2. The employment relationship existed at all times pertinent, to include May 7, 2015, when the claimant sustained a compensable injury in the form of bilateral carpal tunnel syndrome.
> 3. The ruling excluding the payroll records offered by the respondent, which was marked as Respondent Proffered Exhibit, is herein

[4]This does not include the fifty-nine (59) pages of attachments, which have been excluded from evidence (see supra) but will be considered proffered.

reversed, and the document is made a part of the record since the claimant acknowledged having been furnished the document prior to the hearing.

4. On May 7, 2015, the claimant earned an average weekly wage of $704.78, generating weekly compensation benefit rates of $470.00/$352.00, for temporary total/permanent partial disability.

5. On September 22, 2015, the claimant underwent left carpal tunnel release surgery and on November 25, 2015, right carpal tunnel release surgery, both under the care of Dr. Christian Fahey, and was assessed with permanent physical impairments of five percent (5%) and two percent (2%) to the upper extremity respectively. Respondent paid indemnity benefits at the weekly rate of $ 235.00, to correspond with the ratings.

6. The claimant was discharged from the care of Dr. Christian Fahey relative to the compensable May 7, 2015, bilateral carpal tunnel injury on April 21, 2017.

7. The claimant signed and received the Employee's Notice of Injury, Form AR-N, on May 11, 2015, relative to his bilateral compensable carpal tunnel syndrome injury of May 2015.

8. On or about January 9, 2018, the claimant came under the care and treatment of Dr. Brian Norton, at Arkansas Specialty Orthopedics, and subsequently underwent bilateral carpal tunnel surgery, which rendered the claimant temporarily totally disabled for the period February 14, 2018, through June 15, 2018.

9. The medical treatment rendered to the claimant under the care of Dr. Norton with regards to the bilateral carpal tunnel syndrome was reasonably necessary and casually related to the claimant's compensable bilateral carpal syndrome.

10. The claimant has failed to sustain his burden of proof, by a preponderance of the evidence, that he suffered a gradual onset injury to his cervical spine within the course and scope of his employment.

11. The claimant has failed to sustain his burden of proof, by a preponderance of the evidence, that he suffered a specific incident injury to his cervical spine arising out of and in the course of his employment with respondent.

12. The respondent shall pay all authorized reasonably necessary and casually related medical, hospital, and other apparatus expenses

> arising out of and in connection with claimant's compensable bilateral carpal tunnel syndrome injury of May 7, 2015.
>
> 13. The respondent has controverted the claimant's entitlement to temporary total disability benefits for the period covering February 14, 2018, through June 15, 2018; and the claimant's appropriate average weekly wage.

This decision was appealed. On October 8, 2019, the Full Commission affirmed and adopted Chief Administrative Law Judge Blood's opinion. *Byron Watkins v. L.A. Darling Co. LLC*, 2019 AR Wrk. Comp. LEXIS 565, AWCC No. G503430 (Full Commission Opinion filed October 8, 2019 (unpublished). This, too, was appealed. However, the Arkansas Court of Appeals dismissed said appeal.

Chief Administrative Law Judge Blood's opinion is thus binding on this proceeding under the Law of the Case Doctrine and is *res judicata*. *See Thurman v. Clarke Industries, Inc.*, 45 Ark. App. 87, 872 S.W.2d 418 (1994).

Introduction. Claimant is a high school graduate. During the time periods relevant to these claims, May 7, 2015 (G503430), June 1, 2018 (G902279), June 4, 2018 (G902281), and March 4, 2019 (G903969), he was an employee of Respondent Darling. The company manufactures store fixtures. There, he worked at various times as a metal former and on the paint line. In the above-captioned claims, Claimant has alleged that he suffered injuries to various parts of his body as a result of his work at Respondent Darling.

Elbow. In the context of AWCC No. G503430, Claimant has alleged that he sustained a work-related injury to his elbow. Respondents No. 1 dispute this. Claimant has not specified the legal theory under which his purported injuries fall.

Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2012), which applies to injuries purportedly sustained as a result of a specific incident, defines "compensable injury":

> (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 that cannot come under the voluntary control of the patient. *Id*. § 11-9-102(16). The element "arising out of . . . [the] employment" relates to the causal connection between the claimant's injury and his employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant's employment "when a causal connection between work conditions and the injury is apparent to the rational mind." *Id*. If a claimant fails to establish by a preponderance of the evidence any of the above elements, compensation must be denied. *Mikel, supra*. The standard "preponderance of the evidence" means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415 (citing *Smith v. Magnet Cove Barium Corp*., 212 Ark. 491, 206 S.W.2d 442 (1947)).

With regard to regular injuries sustained by gradual onset, Ark. Code Ann. § 11-9-102(4)(A)(ii) & (*a*) (Repl. 2012) reads:

> (ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a

> specific incident and is identifiable by time and place of occurrence, if the injury is:
>
> (*a*) Caused by rapid repetitive motion.

In addition to rapid repetitive motion, a claimant seeking workers' compensation benefits for such a gradual-onset injury must prove that: (1) the injury arose out of and in the course of his employment; (2) the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death; and (3) the injury was the major cause of the disability or need for treatment. Ark. Code Ann. § 11-9-102(4)(A)(ii) & (E)(ii) (Repl. 2012). In *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W.2d 644 (1998), the Arkansas Supreme Court held that there is a two-part test for determining whether an injury is caused by rapid repetitive motion: (1) the tasks must be repetitive; and (2) the repetitive motion must be rapid. If the first element is not met, the second is not reached. *Id.*; *Westside High School v. Patterson*, 79 Ark. App. 281, 86 S.W.3d 412 (2002). Moreover, "even repetitive tasks and rapid work, standing alone, do not satisfy the definition. The repetitive tasks must be completed rapidly." *Malone*, *supra*.

At the hearing, Claimant testified that he does not know what, if anything, is wrong with his elbow. The reason that a claim is being made regarding it is that a physician informed him that his elbow is what causes his hand to "spaz." The following exchange occurred:

> Q. And the issue we have here today with—respect to that particular claim, and that's G503430, the Commission is being asked to determine whether you hurt your elbow. Is it your right or your left elbow, sir?

A. On my elbow?

Q. Yes.

A. It—it wasn't me said my elbow was hurt. The doctor said that.

Q. Okay. We'll, is it your right one or your left one?

A. It wasn't hurt. He said it—have to go in and do surgery to try to find out what's wrong with my elbow . . . [m]y elbow wasn't never on the—on the issue. It was—I was sent to the doctor, and the doctor said that he think that I—that—that what's causing my hand to spaz is coming from my elbow.

Q. Okay. Well, let me ask you, do you personally believe that you—that there's something wrong with your elbow?

A. Well, I don't know what's wrong, if anything wrong, but I know my hand spaz up.

. . .

Q. Do you believe you have an injury to your elbow?

A. All I'm going to say, Judge, I don't know . . . I got sent to the doctor, and he the one said that I need to have my elbow probably worked on to fix my hand.

. . .

Q. You understand it's important for me to find out if you are alleging or you're saying, "Judge, I might—whatever's wrong with my elbow happened as a result of my job at L.A. Darling." Are you saying that?

A. The doctor said—let—let me say this, Judge . . . I don't want to say what—because I never—I never put a[n] elbow down on a claim . . . [t]hat come from the doctor.

. . .

> Q. All right. I'll ask this and rephrase this. Are you aware of anything that you did to hurt your elbow at L.A. Darling, your right elbow? Are you aware of anything?
>
> A. I don't know what—what could've happened to my hand or whatever. All I know is I can't—I spaz in my right hand. I spaz in the left some if I use it too much. But I spaz in this just barely doing anything.

Claimant repeatedly declined to state that he had an injury of any type to his elbow. Moreover, assuming only for the sake of argument that such an injury exists, he testified that he does not know of anything work-related that would have caused it. In sum, apart from any other element of compensability, and regardless of the theory advanced, Claimant has not shown that any elbow injury arose out of and in the course of his employment.

Furthermore, the only findings concerning Claimant's elbow in the evidentiary record are in the report by Dr. James Kelly dated May 22, 2019. It reads in pertinent part: "On [Claimant's] physical findings, I could elicit a positive compression test and Tinel's in both elbows over the ulnar nerve . . . [h]e also had a positive compression test over the pronator tunnel." A positive Tinel's sign has not been held to constitute an objective finding. *See Duke v. Regis Hairstylists*, 55 Ark. App. 327, 935 S.W.2d 600 (1996). Similarly, nothing before me shows that the "compression test" yielded objective, measurable findings. For all of the foregoing reasons, Claimant has not proven that he suffered a compensable elbow injury by a preponderance of the evidence.

Respondents have also contended that this claim is barred by the statute of limitations. However, since I have not found this alleged injury to be compensable, this portion of the issue need not and will not be addressed. *Malone v. Mid-South Mfg., Inc.*, 2003 AR Wrk. Comp. LEXIS 638, Claim No. F100223 (Full Commission Opinion filed April 28, 2003). *See also Estrada v. AERT, Inc.,* 2014 Ark. App. 652, 449 S.W.3d 327. The issue of his entitlement to reasonable and necessary treatment of his elbow is likewise moot.

Neck. Under AWCC No. G902279, Claimant has alleged that he sustained a work-related injury to his neck. Respondents No. 1 have not only denied that this happened; they have asserted that this matter was addressed in the previous opinion and, thus, is barred under the doctrines of *res judicata*, collateral estoppel and/or the Law of the Case Doctrine. Claimant has not specified the legal theory under which his purported injuries fall.

In his decision, Chief Administrative Law Judge Blood wrote:

> The claimant asserts that in addition to the compensable bilateral carpal tunnel syndrome, he suffered an injury to his cervical spine within the course and scope of his employment for which he is entitled to medical and indemnity benefits. The claimant has undergone surgery relative to the cervical spine, and has not been released from treatment by his treating physicians.
>
> The employer takes the employee as he finds him, and employment circumstances that aggravate pre-existing conditions are compensable. *Heritage Baptist Temple v. Robison,* 82 Ark. App. 460, 120 S.W.3d 150 (2003). The aggravation of a pre-existing non-compensable condition by a compensable injury is itself compensable. *Oliver v. Guardsmark,* 82 Ark. App. 460, 120 S.W. 3d 150 (2003). Since an aggravation is a new injury with an independent cause, it must meet the definition of a compensable injury in order to establish compensability.

Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000); *Farmland Ins. Co. v. Dubois,* 54 Ark App. 141, 923 S.W. 2d 883 (1996).

Ark. Code Ann. §11-9-102 (4)(A) (Repl. 2012) defines "compensable injury:

> (ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident and is identifiable by time and place of occurrence, if the injury is:
>
> (b) A back or neck injury which is not identifiable by time and place of occurrence [.]

A compensable injury must be established by medical evidence supported by objective findings as defined in in Ark. Code Ann. §11-9-102 (16). The burden of proof of a compensable injury shall be on the employee. Ark. Code Ann. §11-9-102 (4)(E), provides:

> (ii) For injuries falling within the definition of compensable injury under subdivision (4)(A)(ii) this section, the burden of proof shall be by a preponderance of the evidence, and the resultant condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment.

In the present claim, the claimant maintains that he sustained an injury to his cervical spine while within the course and scope of his employment. The claimant completed a Claim for Compensation, Form AR-C, on July 10, 2018, in which he identified a date of injury as May 7, 2015, and described the mechanics of his cervical spine injury as "years of strenuous heavy lifting" which caused in disk in his neck to bulge and degenerate. In describing the mechanics of the alleged cervical injury, the claimant does not cite a specific incident identifiable by time and place of occurrence. Rather, the claimant's description of his neck complaint is that of a gradual onset over "years if strenuous heavy lifting at work". While the record reflects the presence of objective findings relative to the claimant's cervical spine.

The issue of whether the employment aggravated, accelerated, or combined with a latent prior condition in order to produce the disability is a question of fact. There is no medical opinion about causation in the record relative to the claimant's cervical injury claim. The claimant has failed to establish that the resultant degenerative disc disease at C4-5 and

> C5-6, as well as the posterior disc osteophyte complex abutting the ventral surface of the cervical cord at C5-6, which was identified in the June 4, 2018, cervical spine MRI, arose out of and in the course of his employment with respondent by a preponderance of the evidence.

At the most recent hearing, Claimant in his testimony made clear that the neck injury he was alleging at that time is the same one he has raised in the instant proceeding:

> Q. Judge Blood's opinion talks about problems with your neck, specifically, your cervical spine. He has a whole section where he writes about this. Okay? Do you recall testifying in the previous hearing about that and telling him about that?
>
> A. I told him—yeah, I told him that I had surgery.
>
> Q. Okay. Is the thing that you were talking to Judge Blood about with your neck, is it the same thing that we're here on today on your neck, or did something different happen to your neck lately?
>
> A. No. No, the same.
>
> Q. It's the same?
>
> A. Same—
>
> Q. Okay.
>
> A. --my neck's the same.

The Law of the Case Doctrine provides that the previous decision establishes the law of the case once the lower tribunal takes up the matter again. It is conclusive of every question of law and fact decided previously, and also of those that could have been raised and decided. *Turner v. NW Ark. Neurosurgery*, 91 Ark. App. 290, 210 S.W.3d 126 (2005). In *Searcy Ind. Laundry v. Ferren*, 92 Ark. App. 65, 211 S.W.3d 11

(2005), the Arkansas Court of Appeals, in addressing a claim for additional temporary total disability benefits, wrote:

> Collateral estoppel, also known as issue preclusion, bars relitigation of issues of law or fact previously litigated by a party. *Johnson v. Union Pac. R.R.*, 352 Ark. 534, 104 S.W.3d 745 (2003). The elements of collateral estoppel are: (1) the issue sought to be precluded must be the same as that involved in the prior litigation; (2) the issue must have been actually litigated; (3) it must have been determined by a valid and final judgment; (4) the determination must have been essential to the judgment. *Id.* Collateral estoppel is applicable to decisions of the Workers' Compensation Commission. *See Craven v. Fulton Sanitation Serv., Inc.*, 361 Ark. 390, 206 S.W.3d 842 (2005).

All of these elements have been met. Claimant is thus barred from relitigating the issue concerning whether he sustained a compensable neck injury.

Based on this, the compensability issue, the issue of his entitlement to reasonable and necessary medical treatment for this alleged injury, and the issue concerning whether it is barred by the statute of limitations are moot and will not be addressed.

Back. On April 9, 2019, Claimant filed a Form AR-C, which was assigned AWCC No. G902281. Therein, he alleged that he injured his back at work on June 4, 2018. During his hearing testimony, the following exchange took place:

> Q. And I'll ask you, is it your position that you hurt your back at L.A. Darling?
>
> A. Yes, I hurt my back at L.A. Darling.
>
> **Q. Okay. Can you—did something happen on a particular day when you were lifting something or something like that?**

> **A. Well, I did lift—heavy lifting all the time, but working in the warehouse. I—I don't know if I hurt myself that day. I know I had to go to the emergency room one day.**
>
> Q. Was that June 4th?
>
> A. No, that was—that was in—in 2006.
>
> Q. Okay. Well, let's stop for a second and—and you need to try to listen to this question. **It's been represented to me that you've filed a claim that says you hurt your back around June the 4th of 2018.**
>
> A. **That's when I found out about my back.** That's what I told them. That's when I found out that I was hurt. I didn't find out that I was hurt till Dr. Norton and them did x-ray of my back. Said, "Well, it feel [sic] like something sticking me in my deal," and he told me, "That wouldn't be in your—in your—in your back or nothing. That'd be in your neck." And that's when they x-rayed me and MRI'd me.

(Emphasis added) Based on the above testimony, Claimant cannot establish that he sustained a compensable back injury by specific incident because he has not shown that it was caused by a specific incident identifiable by time and place of occurrence.

To the extent that the claim is one for an injury that is gradual-onset in nature, Claimant was asked repeatedly when his back symptoms began. But he kept giving unrelated, vague answers. Finally, when pressed, he stated: "ever since I've had heart issues, my back deal has—has been going on." Asked when his heart condition began, he responded that it led to his being taken to the emergency room in 2006. This is also reflected in Stipulation No. 6, which reads:

> Claimant was transported to the emergency room in 2006, and was treated by a heart doctor for symptoms he now believes were attributable to his alleged back and neck injuries. He missed work and had leave from work as a result of the symptoms associated with his back and neck in 2006.

On cross-examination, Claimant confirmed that it is his belief that back problems began in 2006.

Arkansas Code Annotated § 11-9-702(a)(1) (Repl. 2012) sets out the applicable statute of limitations:

> A claim for compensation for disability on account of an injury, other than an occupational disease and occupational infection, shall be barred unless filed with the Workers' Compensation Commission within two (2) years from the date of the compensable injury. If during the two-year period following the filing of the claim the claimant receives no weekly benefit compensation and receives no medical treatment resulting from the alleged injury, the claim shall be barred thereafter. For purposes of this section, the date of the compensable injury shall be defined as the date an injury is caused by an accident as set forth in § 11-9-102(4).

The burden rests on Claimant to prove that his claim was timely filed. *Stewart v. Ark. Glass Container*, 2010 Ark. 198, 366 S.W.3d 358; *Kent v. Single Source Transp.*, 103 Ark. App. 151, 287 S.W.3d 619 (2008). Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012), he must do so by a preponderance of the evidence. The Arkansas Court of Appeals in *Cottage Café v. Collette*, 94 Ark. App. 72, 226 S.W.3d 27 (2006) and *Pina v. Wal-Mart Stores, Inc.*, 91 Ark. App. 77, 208 S.W.3d 236 (2005) held that the statute of limitations begins to run in gradual onset scheduled injury cases when the claimant becomes aware of the injury.

Applying the above standard by analogy here to an alleged gradual onset unscheduled injury, it is apparent that the two-year limitations period began to run on the date that Claimant's back symptoms allegedly began. Claimant's testimony shows that this was in 2006. Consequently, he has not proven that this claim was filed in a

timely manner. Instead, the evidence preponderates that it is barred under § 11-9-702(a)(1).

Because of the above finding, the issue concerning whether Claimant is entitled to reasonable and necessary treatment of his alleged back injury is moot and will not be addressed.

Left hip and knee. Under AWCC No. G903969, Claimant has asserted that he sustained a compensable injury to these body parts. During the hearing, he related the following:

> Q. Let's talk about your left hip and your knee. Now this one is March 4th of 2019. On March 4th, 2019, were you working at L.A. Darling?
>
> A. Yes, sir, I was.
>
> Q. What were you doing there that day? Were you working on the paint line or metal forming or what?
>
> A. I was in the metal forming department.
>
> Q. Okay. Did something in particular happen that day that -- were you hurt? Those body parts that I just talked about, your hip and your knee?
>
> A. Yes. I was going back to—to my job, and I—my knee—I fell and bumped on the floor and hurt my knee and hip.
>
> Q. Okay.
>
> **A. And I told Donna Graves, "I don't know what's going on with me" when I come back there. I said, "It's hard for me to keep my balance." I'd already told her that before. But I said, "I'm going to have to see a doctor about it because I don't know what's going on." But I didn't know my neck and—and every nerve in my neck was smashed. I didn't know that every nerve in my back and neck was smashed.**

. . .

Q. All right. Well, let me ask you that. You said that you don't remember if you were on break or not. Were you working when you fell? Were you on break? Do you—do you even know?

A. I was going back to the machine, but I don't know if I was coming from the bathroom or been—had been on break. I don't remember.

Q. Okay. When you say you were going back to the machine, the machine you worked on?

A. Yes, sir.

. . .

Q. Okay. And tell me how you—tell me how you fell.

A. I fell on my—lost my balance and I fell and hit my knee and hip—on my hip and knee.

Q. When you say you lost your balance, did you trip on something? Did you slip?

A. I was walking and just lost my balance. Because of my nerves in my neck were smashed. The doctor—when he checked me out in Chicago and he did surgery on me, he said, "Have you been falling?" I say, "I just fell the other day." He said, "You should've been falling all the time the way every nerve in your back was smash—and neck was smashed."

Q. You keep saying this has to do with your neck. Are you saying that your—your neck condition was why you fell?

A. That's—the doctor said the nerves in my back were smashed. That's why I fell. That my neck and back were smashed. It wouldn't let me hold my balance.

Q. Well—

A. That's what he said.

Q. All right. Are you saying here, then, there was something going on with your back that you lost your balance?

A. The doctor said that the nerves are smashed in my neck and back. That's why I lost my balance.

Q. You keep—sometimes you say "neck." Sometimes you say "back." Sometimes say "neck and back."

A. I'm just saying he said the nerves in both of them were smashed.

Q. Okay. So if I'm understanding you correctly, you just lost your balance?

A. Lost my balance walking.

(Emphasis added) On cross-examination, Claimant reiterated that he believes that his neck and back problems are what called him to lose his balance and fall on this occasion.

An idiopathic injury is one whose cause is personal in nature, or peculiar to the individual. *Kuhn v. Majestic Hotel*, 324 Ark. 21, 918 S.W.2d 158 (1996); *Little Rock Conv. & Visitors Bur. v. Pack*, 60 Ark. App. 82, 959 S.W.2d 415 (1997). Injuries due to an unexplained cause are different from those whose cause is idiopathic. *ERC Contractor Yard & Sales v. Robertson*, 335 Ark. 63, 977 S.W.2d 212 (1998). An unexplained injury at work is generally a compensable one. *Pack*, *supra*. On the contrary, since an idiopathic injury is not related to one's employment, it is generally not compensable unless conditions related to the employment contribute to the risk of injury or aggravate the injury. *Id*.

No evidence was offered that Claimant's alleged hip and knee injuries are gradual-onset in nature. As for whether he has proven that he sustained a compensable specific-incident injuries to these body parts, the evidence shows that the fall that he suffered was idiopathic in nature. *See Askins v. Kroger Ltd. Partnership I*, 2018 Ark. 23, 535 S.W.3d 629; *ERC Contractor Yard & Sales, supra*. His alleged neck and back conditions have not been proven compensable. *See supra*. They are personal, or peculiar, to him. Moreover, I do not find that his job for Respondent Darling placed him at higher risk of injury, caused him to be more susceptible to loss of balance, or contributed to his alleged knee and hip injuries in any way. *See id*. Consequently, I cannot find that these alleged injuries are compensable. For me to find otherwise would require that I engage in speculation and conjecture. But this I cannot do. *See Dena Construction Co. v. Herndon*, 264 Ark. 791, 796, 575 S.W.2d 155 (1979). Thus, Claimant has not proven that he sustained a compensable injury here by specific incident.

Because of the above findings, the issue concerning whether Claimant is entitled to reasonable and necessary treatment of his alleged left hip and knee injuries is moot and will not be addressed.

Hand. As part of AWCC No. G503430, Claimant in this proceeding is asking for additional treatment of his compensable hand injury. Respondents, in turn, assert that this claim for additional benefits is barred by the statute of limitations.

The evidence shows that the only Form AR-C that has been filed in connection with this particular injury was filed on July 6, 2015. Therein, Claimant marked boxes

requesting initial benefits of temporary total disability, temporary partial disability, permanent partial disability, rehabilitation, attorney fees, and medical expenses. In his 2019 opinion discussed above, Chief Administrative Law Judge Blood addressed, *inter alia*, Claimant's initial claim for medical benefits. The statute of limitations is benefit-specific. *See, e.g., Kirk. v. Cent. States Mfg.*, 2018 Ark. App. 78, 540 S.W.3d 714; *Flores v. Wal-Mart Dist.*, 2012 Ark. App. 201. The statute of limitations concerning Claimant's claim for medical benefits was no longer tolled once the previous hearing was litigated to conclusion. This date was October 8, 2019, when the Full Commission affirmed Chief Administrative Law Judge Blood's opinion. Claimant had until October 8, 2020, to file a claim for additional medical benefits. The reason for this is that the last payment of compensation for purposes of this claim occurred on May 22, 2019, when Dr. James Kelly saw Claimant; thus, no additional tolling occurred.

However, Claimant did not do so. He has not filed another Form AR-C. Per Ark. Code Ann. § 11-9-702(c) (Repl. 2012):

> A claim for additional compensation must **specifically** state that it is a claim for additional compensation. Documents which do not **specifically** request additional benefits shall not be considered a claim for additional compensation.

(Emphasis added) The Arkansas Supreme Court in *Menser v. White Cty. Judge*, 2020 Ark. 140, 597 S.W.3d 640, held that the above-quoted provision means what it says: to constitute a claim for additional compensation, Claimant must make a filing with the Commission that "that specifically state[s] that it is a claim for additional compensation." No other document that Claimant filed with the Commission on or before October 8,

2020, meets this standard. Consequently, Claimant has not proven by a preponderance of the evidence that he timely filed a claim in connection with this matter. Instead, the evidence preponderates that this portion of AWCC No. G503430 is time-barred under Ark. Code Ann. § 11-9-702(b)(1) (Repl. 2012), which reads:

> In cases in which any compensation, including disability or medical, has been paid on account of injury, a claim for additional compensation shall be barred unless filed with the commission within one (1) year from the date of the last payment of compensation or two (2) year from the date of the injury, whichever is greater.

Because of the above finding, the issue concerning whether Claimant is entitled to additional treatment of his compensable hand injury is moot and will not be addressed.

CONCLUSION

In accordance with the findings of fact and conclusions of law set forth above, the above-captioned claims are hereby denied and dismissed.

IT IS SO ORDERED.

_____

Hon. O. Milton Fine II
Chief Administrative Law Judge